cause of peace, reconciliation and justice. If politicians do not decide and act for just change then the field is left open to the men of violence. Violence thrives best when there is a political vacuum and refusal of political movement.

The Pope helped to dispel a major myth which is perceived by many in the world that the problem in Northern Ireland is a sectarian one. He said:

The tragic events taking place in Northern Iseland do not have their source in the fact of belonging to different churches and confessions, that this is not, despite what is so often repeated before world opinion a religious war between Catholics and Protestants.

The problems of Ulster are multifaceted and involve the very core of human existence the Pope said it quite eloquently—

As long as injustices exist in any of the areas that touch upon the dignity of the human person be it in the political, social, or economic field, be it in the cultural or religious fields—true peace will not exist.

Pope John Paul II has delivered not just a message of words, it should be a catalyst for action—for resolution of the agony of Ireland. There are optimistic signs that movement toward a cease fire may already be underway. I maintain as I have throughout my tenure as chairman of the ad hoc committee that such a cease fire is vital to the peace process however no cease fire will be called unless it can be demonstrated that political initiatives are forthcoming.

As we reflect on what the Pope has said—it is important to recognize the overriding desire of many in this world that there be a just and lasting peace for Ireland. That has been the motivating factor behind the 2 years of activity of the ad hoc committee. In the months ahead we intend to continue to work for the enactment of House Concurrent Resolution 122 which I introduced with some 70 cosponsors calling on Great Britain to embark on a new political initiative for Ireland which restore lost human rights and promotes self-determination. Our efforts will also be directed at conducting a full investigation of reports that American firms in Northern Ireland are practicing discrimination against the Catholic minority. The element of economic discrimination has clearly existed and has contributed to the stalemate which exists in the six counties. We must work vigorously for its elimination especially where American firms are involved. This investigation will be conducted by our committee with special assistance from my colleague from New York, BENJAMIN GILMAN.

Mr. Speaker, Pope John Paul II saw millions in Ireland and his message was a clear one. He concluded his remarks at Drogheda with the following:

Let history recount that at a difficult moment in the experience of the people of Ireland the Bishop of Rome set foot in your land, that he was with you and prayed with you for peace and reconciliation for the victory of justice and love over hatred and violence.●

SENATE—*Wednesday, October 3, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by Hon. J. JAMES EXON, a Senator from the State of Nebraska.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Hear the words of the Apostle Paul in his first letter to the Thessalonians:

NATIONAL DAY OF PRAYER

Pray without ceasing.—I Thessalonians, 5: 17.

God of our Father's and our God, we thank Thee for a nation so grounded on Thy truth and so steeped in Thy word that we celebrate a national day of prayer. We lay before Thee our continued dependence upon Thee. Bless this land and its people. Help us to pray when we are alone, to pray in church, to pray in our homes, to pray in Congress, to pray while we work. Teach us to pray the prayer of brotherhood and unity. Teach us to pray the prayer that brings peace and power. Teach us to pray without ceasing.

Give Thy higher wisdom to the President and all who bear the responsibilities of government. And may we all pray—

"Breathe on me, Breath of God,
Fill me with life anew,
That I may love what Thou dost love,
And do what Thou wouldst do."
—EDWIN HATCH.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 3, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. JAMES EXON, a Senator from the State of Nebraska, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. EXON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I do not believe I have any time under the order.

The ACTING PRESIDENT pro tempore. The majority leader and the minority leader are sharing the time until 9:30.

Mr. ROBERT C. BYRD. Does the Senator from Wisconsin wish me to yield?

Mr. PROXMIRE. Three minutes.

Mr. ROBERT C. BYRD. I yield 3 minutes to the distinguished Senator from Wisconsin.

REAPPOINTMENT OF ADM. H. G. RICKOVER

Mr. PROXMIRE. Mr. President, I received word today that the Secretary of the Navy has extended Admiral Rickover on active duty for 2 more years beyond January 31, 1980, when his current tour of duty was scheduled to expire.

I applaud this decision by the Secretary. Admiral Rickover has compiled a truly impressive record as head of the naval nuclear propulsion program since its inception more than 30 years ago. Today, the nuclear submarine fleet is the backbone of our national defense with the ballistic missile submarine undoubtedly our most effective deterrent.

While his technical accomplishments in more than a half century of Government service are unsurpassed, Admiral Rickover has always demonstrated that characteristic which we too seldom find in the Federal Government—a personal commitment to promote effective and efficient Government for the people of the United States.

Admiral Rickover is one of the few Government officials with the courage to demand that Government contractors live up to their contracts. He has rooted out waste and corruption on numerous occasions. His career is eloquent testimony to the wisdom of keeping experienced, dedicated persons in office and to the fact that incorruptibility can prevail in the Government bureaucracy.

Over the years Members of Congress have come to rely on Admiral Rickover because of his honesty and candor as well as his technical expertise. He speaks

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

his mind regardless of the DOD's party line. The public owes him a debt of gratitude for his tireless efforts in the public interest.

In short, Admiral Rickover is an exemplary public servant. He is a great asset for the Navy. We need more like him.

I commend the Secretary of the Navy for his decision and extend to Admiral Rickover my appreciation for the many services he has rendered to this Nation.

GENOCIDE: A PROPER SUBJECT FOR A TREATY

Mr. PROXMIRE. Mr. President, over the last 25 years, the Genocide Convention has been trapped in this Chamber by criticisms which have been repeatedly shown to be without substance. Of all the arguments raised against the treaty, one is particularly shortsighted—the claim that genocide is not a proper subject for a treaty.

Since the genocide treaty was introduced to the Senate on June 16, 1949, President after President has insisted that an international treaty is an appropriate means of curtailing genocide.

Eighty-three other nations agreed with our chief executives and adopted the convention as a suitable response to the most heinous of international crimes.

The United Nations' General Assembly Resolution 95(I) described genocide as "a crime under international law" the punishment of which "is a matter of international concern." In fact, the General Assembly specifically recommended a treaty as the proper means of dealing with genocide.

Our Presidents, our neighbors, the United Nations, and indeed a large number of my distinguished colleagues, have always believed that genocide is a proper subject for a treaty. The Senate has been irresponsible in their failure to face the facts—there is simply no better method at our disposal to prevent the occurrence of genocide.

It is no longer feasible to hide behind the claim that genocide is only of domestic concern. Genocide—the attempt to destroy any national, racial, ethnic, or religious group—is an international matter. It cannot be restricted, practically or morally, by national boundaries. A crime of such magnitude must be dealt with on a global level.

As President Carter explained in a speech before the General Assembly:

> No member of the United Nations can claim that mistreatment of its citizens is solely its own business.

Without ratification of the treaty, we are allowing the most fundamental human right—the right to live—to remain a domestic issue, subject to the whims of illegal governments and irrational dictators. I ask my distinguished colleagues to ratify the Genocide Convention and confirm the truism that genocide is a crime against humanity.

Mr. President, I thank the majority leader for his generosity.

Mr. ROBERT C. BYRD. Mr. President, I reserve the remainder of my time.

Mr. STEVENS. Mr. President, I yield the minority leader's time to the distinguished Senator from Texas who has the first special order.

RECOGNITION OF SENATOR TOWER

The ACTING PRESIDENT pro tempore. Under the previous order the Senator from Texas (Mr. TOWER) is recognized for not to exceed 15 minutes.

THE SOVIET CHALLENGE

Mr. TOWER. Mr. President, the uninspired address by the President of the United States to the American public the night before last leaves unanswered the vital question:

What is U.S. strategy for coping with accelerating Soviet efforts to become the dominant influence in the world? That central question has preoccupied allied political circles for 2½ years as Soviet challenges to Western interests have gained momentum. The question has been raised again in recent weeks over the matter of Soviet forces in Cuba. This latest Soviet test of American competence to understand the global dimensions and instruments of its campaign can only be heartening to the Soviet leadership.

Declaring at the outset that the "status quo was unacceptable," President Carter after a month of rationalization, ineffectual posturing, accommodation, hand wringing and chaos has decided that the status quo is acceptable—the troops will remain—only our perceptions of them will change.

The series of measures to be taken are all on our side and are empty of content or tangible result: The Soviets are required to do nothing.

The specific actions which the President has indicated he will take in the Caribbean are cosmetic. Setting up a "headquarters" in Key West and increasing the number of exercises in the area are certainly not going to impress anyone. The President failed to note, for instance, that we already have an established naval command in Puerto Rico, that Marine battalions have routinely made cruises in the Caribbean and that the Navy conducts regular training from Guantanamo Bay in Cuba itself. With the forces we realistically have available, it is unlikely that these low-level activities will be noticed. It is certainly no demonstration of resolve.

The President's assurances of our military strength to the contrary notwithstanding, it is fact that we do not now possess the military capability to support a long term global strategy aimed at protecting our vital national interests. The assertion that our "defenses are unsurpassed" is arguable. The statement that "those defenses are stronger tonight than they were 2 years ago" and that "they will be stronger 2 years from now" is grossly misleading since it ignores that the pace of Soviet growth greatly exceeds our own. The administration's own 5-year plan is not even fully funded and if not significantly expanded will concede to the Soviets military superiority in conventional, theater nuclear, and strategic power for the last two decades of this century.

Thus the fundamental question—what is our strategy—remains open. To all appearances, the answer is "that we will do little or nothing to inhibit the remorseless pursuit of their objectives by the Soviets."

This absence of leadership in responding to this most fundamental issue of our generation is extremely worrisome in its implications. This latest nonanswer can only be encouraging to Russia and disheartening to our allies. Now faced with the Soviet takeover of the Kurile Islands, and a significant military buildup thereon only a stone's throw from Hokkaido, what can the Japanese expect in the way of support? What can our allies in the Middle East—who have witnessed the largest Soviet airborne exercise in history take place in South Yemen—expect of us? The answer is accommodation and appeasement.

In the months ahead, the issue will be raised again as the SALT II treaty—the political centerpiece of United States-Soviet relations—lies before the Senate. By its action the United States will either ratify this history of decline or signal a renewed determination of the American people to restore their strength and get on with the defense of our interests. The shoddy record of this latest episode is by no means encouraging. It surely weakens any argument for entering into yet another Soviet deception of the magnitude of SALT II.

Mr. President, I yield back the remainder of my time and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ENERGY MOBILIZATION BOARD: COORDINATING OUR NATIONAL ENERGY POLICY

Mr. ROBERT C. BYRD. Mr. President, yesterday the Senate turned to a new and potentially important element of our national energy program—the Energy Mobilization Board bill.

A broad sweep of events has led us to this point. Since the Second World War, the United States has experienced unprecedented economic growth, especially during the latter part of the 1960's. A growing, hard-working population and a country endowed with vast amounts of raw materials was the formula for a large measure of our economic prosperity.

During those years, scant attention was paid to the great amounts of energy being wasted in all parts of our economy. Perhaps that is understandable, as the economy itself was so strong and energy seemingly so plentiful that wasted energy was not a matter of major concern.

Conditions began to change at the beginning of this decade. The Organization of Petroleum Exporting Countries (OPEC), which had been formed in 1960 as a loose federation of oil producers, became the center of world attention in late 1973. The embargo of oil to the United States and the subsequent quadrupling of the price of oil are events with which we are all too familiar. The world price of oil before the embargo was just over $3 per barrel. Shortly after the embargo, the price rose to $12 per barrel.

The shock visited on the U.S. economy by this jump was immediate and substantial. Industries heavily dependent on fuel oil or petrochemicals experienced a quick downturn. There were long lines at gasoline stations, a situation repeated less than 3 months ago in many parts of the Nation. Odd-even gasoline rationing systems were the order of the day in 1973 and again in 1979.

These occurrences lead us to the central fact of our energy problem: With the exception of 1978, U.S. oil imports have increased each year for the last decade. Until that trend is reversed, our national security and our economic well-being are diminished.

Congress has acted to reverse the trend. Less than 1 month after the October 1973 embargo, Congress approved a bill permitting construction of the Alaska oil pipeline. Shortly after that, the Emergency Petroleum Allocation Act was passed. That law established a distribution system for the reduced supply of crude oil and refined products available to the United States.

When the limitations of the emergency allocation law became evident, Congress undertook a major revision of this legislation. The result was the Energy Policy and Conservation Act of 1975, which formed the basis of our nonnuclear energy policy. The law set price and allocation controls on crude oil and refined products and established a system whereby the President would submit proposed changes in the controls to Congress. It is under this law that the President exercises his authority to decontrol oil prices.

The unusually harsh winter of 1976–77 brought a new energy problem into focus—a shortage of natural gas. Within days of convening in January 1977, the 95th Congress passed the Emergency Natural Gas Act. High-priority users of natural gas were identified by the law, and special distribution authority was given to the President, so that gas supplies would be divided fairly.

For the remainder of the 95th Congress, comprehensive energy legislation was labored over, and five major laws were produced.

First of these is the National Energy Conservation Policy Act, which authorizes utilities to perform energy audits for homeowners. Home improvements to increase the efficient use of energy can be financed with loans from the utilities, based on the results of the energy audit. The act also sets up a program to encourage conservation by schools, hospitals, and other public institutions, primarily by the use of grants. The law contains guidelines for energy use in Federal buildings, and aims to reduce oil consumption by increasing the use of solar heating equipment wherever practical.

The second piece of the comprehensive energy package is the Fuel Use Act, which requires new powerplants and industrial facilities to burn coal, and requires existing powerplants to burn coal after 1990, and authorizes the Secretary of Energy to require existing industrial facilities with coal capabilities to burn coal. The purpose of this important measure is to directly reduce the amount of oil imported to produce electricity, and to spur the direct use of our most plentiful energy resource—coal. This act is currenty being implemented under the watchful eye of Congress, and is crucial to a meaningful national energy policy.

The third segment of the package is the Natural Gas Policy Act. That law phases out price controls on natural gas in a gradual manner and redefines priority users of gas. More plentiful supplies of natural gas transported in an efficient and timely fashion have resulted in large part from this law.

Another element in the comprehensive package is the Public Utility Regulatory Policy Act. The main purposes of this law are to promote fair rate structures and encourage energy conservation by utilities.

The fifth portion of the package adopted last year is the Energy Tax Act of 1978. This law provides tax credits for energy conservation improvements and includes incentives for conversion of industrial equipment from oil or gas to more abundant fuels.

As I noted on the Senate floor on August 21, 1978, Congress has taken many important actions in the energy field. Laws were enacted in the 95th Congress on such diverse energy topics as mine safety, small business energy loans, and the establishment of the Department of Energy. In total, the list includes nearly 50 important energy-related measures passed by the Senate during the 95th Congress, most of which were enacted into law.

The overview provided by this synopsis of events in the area of energy and the congressional response to our energy problems is clear: We must reduce our reliance on imported oil. The measures approved to date address that problem in varying degrees. The bill we are now considering, to create an Energy Mobilization Board, gives us another opportunity to confront the problem.

The United States has to decide whether it will continue to pay as much as $25 per barrel of imported oil, or whether it will make the effort to produce enough energy on its own to insure energy independence.

The Energy Mobilization Board, as set out in S. 1308, is proof that the United States chooses to make that effort. The primary purpose of the Board is to oversee a clear and unambivalent "fast track" process. Vital energy projects such as pipelines and synthetic fuel plants are two types of activities the Board could designate as priorities.

The first test for any project being considered for designation as a priority is this: Is the project likely to reduce our Nation's dependence on foreign oil? If the answer is "yes," then the Energy Mobilization Board will be able to provide a reliable timetable under which the project can be constructed. This policy, Mr. President, makes very good sense.

Several avenues will be available to the Board as it seeks to cut redtape and add predictability to the regulatory process. Under the Jackson bill, the Board will set strict deadlines for decisions affecting energy projects which must be made by Federal, State, or local agencies. Should any of these agencies fail to meet a deadline, the Board could make the decision itself. In making such a decision, the Board will have to make whatever findings are required of the agency under law, and use whatever information the agency would use to make the decision. Agencies are requred to submit information to the Board which is necessary to make such decisions.

Another means of expedited decisionmaking available to the Board is its ability to obtain a court order forcing an agency to make crucial decisions within specific time limits. In such cases, the Board is empowered to enforce a timetable for a priority project but does not have to make the decision. These different means of enforcing deadlines will give the Board the flexibility it needs to carry out its purpose.

The Energy Committee has wisely prohibited the Board from becoming involved in the disposition of water rights. Water law has been purely a State function, and it will remain so under S. 1308.

On the question of environmental impact statements, the Jackson bill gives the Board the authority to require one such document, in compliance with the National Environmental Policy Act, and to designate a single agency to prepare it.

I have noted the most important energy legislation Congress has passed. The distinguished chairman of the Energy Committee, Senator JACKSON, has made his mark on all of them. He and his committee have labored long and hard to produce numerous pieces of legislation; Senator JACKSON has been a knowledgeable and effective floor manager; he has been a tireless leader of Senate conferees. By his able participation at every stage of the legislative process, he has made an invaluable contribution to an emerging, comprehensive energy policy.

I want to express my admiration for the expeditious fashion in which Senator JACKSON and the Energy and Natural Resources Committee have acted in reporting this bill. The bill went through 15 markup sessions, and has received painstaking consideration.

It is also appropriate for me to note at this time that other committees, other committee chairmen, have played a significant and helpful role in developing not only the legislation before us today, but other pieces of energy legislation which I expect will be reported in the near future. Mr. RANDOLPH, chairman of

the Environment and Public Works Committee, Mr. RIBICOFF, chairman of the Governmental Affairs Committee, Mr. MUSKIE, chairman of the Budget Committee, Mr. PROXMIRE, chairman of the Banking, Housing, and Urban Affairs Committee—these Senators have all cooperated in expeditious and thorough consideration of various energy proposals.

I want to express my appreciation to the distinguished Senator from Louisiana, Mr. JOHNSTON, who is the majority floor manager of this bill. He is performing an admirable job.

I also wish to congratulate the Senator from New Mexico (Mr. DOMENICI), the minority floor manager, and the Members on the Republican side of the aisle, especially Mr. HATFIELD, the ranking minority member of the Energy and National Resources Committee, and Mr. MCCLURE, for the support that they have given to Mr. JACKSON in bringing the Energy Mobilization Board proposal to the floor.

I want to commend here Mr. STAFFORD, ranking minority member of the Environment and Public Works Committee, Mr. PERCY, ranking minority member of the Governmental Affairs Committee, Mr. BELLMON, ranking minority member of the Budget Committee, and Mr. GARN, ranking minority member of the Banking, Housing, and Urban Affairs Committee.

In this body, we advocate bipartisan efforts in dealing with the energy problem, and because we have had bipartisan support, we have moved difficult, contentious legislation to passage. I know of no subject that is any more divisive or any more contentious than the subject of energy. The leadership on this side has always advocated cooperation with the minority, and we have had the support of the minority. By dealing in this bipartisan fashion, we have been able to pass difficult legislation.

Mr. President, I am a cosponsor of S. 1308, and I would like to express my views on it directly. There are some who feel that this legislation does not go far enough. They argue that the urgency of energy development requires a stronger, more centralized Federal authority than that contained in this bill.

On the other hand, some feel the legislation reported by the committee already goes too far—that too much emphasis has been put on expediting energy development and too little attention has been paid to the role of the States and environmental concerns.

In my view, the Energy Committee has struck a good balance among the concerns of all parties involved. In the interest of our common goal of energy independence, it is my hope that we not jeopardize this balance by adopting amendments that overreach that purpose. I know that all Senators have carefully studied the matter, and I am sure that this debate will be productive.

I yield to the Senator from Texas.

Mr. TOWER. Mr. President, if the Senator will yield for a brief comment, he has made a good, comprehensive statement. I suppose it would be well to say at this point that 10 years ago, when we were buying Arab oil for $1 or $1.50 a barrel and raising import quotas to allow it to come in, it had an enormous effect on the oil and gas industry in this country. Rigs were stacked, production was inhibited, and I think we are paying the price for that now.

In connection with the majority leader's remarks on the Energy Mobilization Board, I think we must take appropriate steps. I think the Energy Mobilization Board is simply the first step. We are probably going to have to address ourselves to the fact that we may be currently retaining some unreasonably rigid and perhaps too harsh environmental protection standards that are going to cost us in terms of energy development and economic growth.

I know the Senator from West Virginia represents a State with great energy-producing potential, not only in the field of coal, but oil and natural gas as well. I hope he will give consideration to the fact that sometimes our environmental protection efforts may have gone a little bit to far, and that if we are going to sustain economic growth and energy production in this country, we are going at some time to have to reexamine some of those environmental protection measures.

Mr. ROBERT C. BYRD. I thank the Senator for his statement. I agree that we need a balanced approach. We need to recognize that this country has a very serious energy problem that could become a crisis overnight, brought on perhaps by some international emergency. It is absolutely imperative that we walk the middle course.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the Senator from Missouri (Mr. EAGLETON).

RUSSIAN TROOPS IN CUBA

Mr. EAGLETON. Mr. President, for the next half-hour or so it is my anticipation that several Members of the Senate will wish to address themselves to the question of the Russian troops in Cuba. I have some remarks thereon, but I am going to defer mine at this time because we have with us the distinguished second-ranking majority member of the Foreign Relations Committee; he has another obligation which begins promptly at 10 o'clock, and I yield such time as he may require on this subject to the Senator from Rhode Island (Mr. PELL).

Mr. PELL. Mr. President, I thank my friend from Missouri, and congratulate him on taking the leadership in articulating some of our thoughts about the Soviet brigade issue.

A SENSIBLE SOLUTION TO THE SOVIET BRIGADE ISSUE

Mr. President, the night before last President Carter spoke to the Nation about what he has achieved and what he plans to do in connection with the problem that has arisen over the presence of Soviet troops in Cuba. In my own view, the combination of the assurances received from the Soviets and the specific measures that the United States will undertake unilaterally represent a measured, but firm, response to a development that has generated controversy and tension far out of proportion to the problem involved.

In my view, the President has put the question of the Soviet brigade in its proper perspective and has outlined a response that is appropriate for the situation. The presence of a small Soviet unit in Cuba with no capability to wage combat anywhere but on the island of Cuba is not the same thing as the emplacement of missiles that perpetrated the genuine Cuban crisis of 1962. President Carter fully realized that and acted accordingly.

On September 12, I outlined my views on what would be an acceptable solution to the brigade issue. I said at that time that it must be clear "(a) that Soviet forces in Cuba will not be given a capability to threaten directly either the United States or any other nation in the hemisphere, and (b) that Soviet forces in Cuba are not designed in any way to support Cuban military adventurism in Latin America. If these tests are met, we should not, in my view, be concerned about whether some Soviet presence in Cuba continues." I believe that the Soviet assurances, together with the other actions announced by the President last night, meet these tests; and I therefore support the President's handling of this matter, and join the President in hoping that the whole business about the 2,500-man Russian brigade, a unit that has been in Cuba for more than 15 years, will fade into the global and national insignificance it deserves when compared with the SALT treaty. As one of our colleagues has said, perhaps a little lightly, if that brigade came to Miami it might be lost in the traffic there. I do believe we have blown this whole thing so far out of proportion that we have lost sight of the real issue here, which is whether we should get on with our discussions and ratify the SALT II treaty. So I hope and urge that the Senate will now get on with the business at hand concerning SALT II. We owe it to our constituents and to the cause of peace to face up to deciding whether the SALT II package is in our national interest. Whether or not SALT II is approved, it must no longer be held hostage to the brigade issue. The time has come for the ones who oppose the treaty to stop hiding behind a handful of sea-locked Soviet soldiers.

I hope and trust that we can now get this issue back into focus, recognizing that for more than 17 years these men have been there. Maybe they have been different men, replacing one another. Undoubtedly they have, or they would all have long gray beards by now. Perhaps they have different weapons and different uniforms, but a unit has been there, no matter whether it is called a training unit or a combat unit.

I hope, once again, we can now get on to the serious business at hand,

which is deciding whether we should have a SALT treaty. The SALT II treaty may not be the greatest thing in the world, but it is not the bogey bear its opponents make it out to be. Nor is it the panacea that many of its supporters say. But it is a good, useful step on the road toward the point where we want to go; it is a small but useful step in the right direction as the Joint Chiefs of Staff said. I hope we get on with it as quickly as we can.

Mr. TOWER. Will the Senator yield?

Mr. PELL. Yes, I yield.

Mr. TOWER. The Senator has made the observation that this combat brigade has been there for more than 15 years. What intelligence do we have that indicates that it has been there more than 15 years, constituted as a combat brigade? I was not aware that there was certain intelligence that we could believe with high confidence that it had been there for 15 years, constituted as it is now, as a combat brigade.

Mr. PELL. As I mentioned in my remarks, it could be called either a combat unit or a training unit. But as to the quantity of men in the brigade, we have known that there are around 3,000 people there. There were 20,000.

Mr. TOWER. But the question was: Has it been constituted into a combat brigade in its present configuration for 15 years?

Mr. PELL. That I do not know.

Mr. TOWER. Then I do not think we can make the assertion that it has been.

Mr. PELL. Presumably, if it is a training brigade, it is also a combat brigade. Whether the Senator is wearing a blue suit or a brown suit, he is still my good friend, JOHN TOWER.

Mr. TOWER. Well, I do not wear brown. But getting back to the question, the question is not whether the Soviets have been present in Cuba for 15 years. We know that they have been. How long have they been constitued into an independent combat brigade? Not there for training purposes; that is something that we know with high confidence. In fact, we suspended our aerial surveillance, our SR–71 flights, for 2½ years. Is it not possible that they could have been constituted into a combat brigade in that period of time?

Mr. PELL. I think they could have been constituted years ago as a training or a combat brigade. They are trained, equipped if they want to be used for training. I am not quite sure what powerful effect a unit of 2,500 men would have in combat, but they could be used either way. They could have been 15 years ago.

We should think back to 1962, when there were 20,000 men there and after they withdrew the missiles, they lowered it to 5,000. It has been pretty steady ever since.

Mr. TOWER. Is it not a fact that 2½ years ago, we had no intelligence that led us to the conclusion that there was indeed a combat brigade constituted as such, a Soviet combat brigade, in Cuba?

Mr. PELL. My own belief, from the briefings I have had, is that if we had decided we wanted, for one reason or another, to draw that conclusion 2 years ago or 12 years ago, we could have. As I said earlier, I take it for granted that the Senator does not wear a brown suit. I often do. I am the same man whether I wear a blue suit or a brown suit. Whether you call it a combat brigade or a training unit, it is the same.

Mr. TOWER. I do not think it is the same, because the intelligence is that it is a combat brigade, organized as a combat brigade, equipped as a combat brigade. It is not a training brigade. It is not there for the purpose of training Cuban troops. It could be there for the purpose of giving a Russian combat brigade some exercise in climatic or environvental conditions of that sort.

Too, the Senator makes another interesting assertion. That is that this brigade could not constitute any threat to any other Central American country.

Mr. PELL. I did not say that, I said to the United States. It might get lost in the traffic in Miami.

Mr. TOWER. Certainly, they are not going to invade Miami. I do not think anybody gives any reasonable thought to that. But, given the most rudimentary environment or any kind of air or sealift, is it not possible they could have been inserted into other areas?

Mr. PELL. Certainly, the way we often want to insert our Marines and often have. I hope they would not.

Mr. TOWER. The Senator mentions our Marines. With regard to our Marines, the fact is that our sealift and airlift has diminished over the years, as the Soviet air and sealift have been vastly enhanced. General Meyer made the statement in this morning's Washington Post that we do not have the lift capability to deploy a rapid combat force, as it is suggested that we would use in a contingency situation.

Mr. PELL. That could be, but I thought we had the ability to deploy a large number, many times 2,500 men, to NATO and have done that in exercises.

Mr. TOWER. The next crisis may not occur in NATO. Obviously, we have a lot of prepositioned equipment in Western Europe. We could logistically support activities there, but even there, reinforcement becomes a problem because of a lack of sea and airlift capability, certainly a lack of rapid resupply capability.

In terms of this combat brigade that is in Cuba, does the Senator from Rhode Island think that any Central American army would be a match for this brigade, given the sealift capability to get them to Central America?

Mr. PELL. I do not think any Central American army probably would. But I think even a smaller unit might be a real threat to most of those armies there, if the Soviets could get there.

Mr. TOWER. Do we not consider anything that constitutes a threat to the western hemisphere or to the political stability or the territorial integrity of nations in the western hemisphere to be a threat to the United States?

Mr. PELL. It is an unpleasant fact. It is far less of a threat than it was 15 years ago. Certainly, it is a disagreeable business and we wish that Russians were not in Cuba at all. But they are there and they have a presence, but not a significant one.

My point is that the presence has not really changed in these years. It would be nice if we could push them all out, but that does not seem in the cards for the moment.

Mr. TOWER. Does the Senator from Rhode Island feel that anything has really changed over the past month? Has there been any movement by the Soviet Union?

Mr. PELL. No, it is my understanding that things have remained pretty much the same over the last month and over the last 15 years.

Mr. TOWER. Therefore, everything that is being done in response to the Soviet presence in Cuba is being done by us. Nothing is being done by the Russians.

Is it not true in that case, then, that President Carter once said the status quo is unacceptable, but changed his mind and decided Tuesday night that it is acceptable? Does that not represent a change in the administration's thinking?

Mr. PELL. That is a conclusion the Senator can draw. That is his own conclusion, not mine. I let my remarks stand as they do.

Mr. TOWER. Does the Senator from Rhode Island think it is a little bit superfluous to establish a headquarters in Key West when we already have a sea frontier command in Puerto Rico?

Mr. PELL. I think it gives some response to the American desire to exhibit our macho, somewhat like we did with that vessel, the *Mayaguez*, in Southeast Asia, where we lost more lives taking it than we saved. Also, I think that we have some 5,000 troops at Guantanamo. I made the suggestion at one point that perhaps we ought to land an additional 2,500 troops at Guantanamo in order to give them tit for tat.

I think these actions are designed to bolster the desire to show the American macho. I think this desire is perhaps more prominent in the U.S. Senate than it is in the United States. Nevertheless, the SALT treaty has to pass the U.S. Senate.

Mr. TOWER. Does the Senator think it is going to impress anyone when we land Marines at Guantanamo, supported by 10 A–4's, which is obviously an obsolete airplane and no match for the Soviet Mig jets now confronting them?

Mr. EAGLETON. Mr. President, how much time do I have remaining of my 15 minutes?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes remaining.

Mr. EAGLETON. I should like to reserve the remainder of my time, since I have not spoken in any of it myself.

Mr. TOWER. Mr. President, I am sorry I have intruded on the time of the Senator from Missouri. I shall see if I can intrude on somebody else's time later.

Mr. EAGLETON. Mr. President, I yield to the Senator from Rhode Island (Mr. CHAFEE) and I shall see if I can get some more from somebody else.

Mr. CHAFEE. Mr. President, I should like to say about this whole fuss over the Soviet troops in Cuba that it is en-

tirely unwarranted, in my judgment. We are the land of the free and the home of the brave and we are shivering in our boots because there are 2,000 to 3,000 Russian combat troops in Cuba who have been there for—is it 2 years or 17 years? What kind of threat do they present to the United States, Mr. President? It seems to me that this is an entirely unfortunate diversion.

Let me say that I think the administration shares in the blame. I think the administration has not handled it well. I think the administration erred, to come forward with a statement that the status quo is completely unacceptable—and then, of course, it is acceptable. The changes made as a result of the statements made in the President's speech the other night were rather minor, if they achieved even that dignified status.

The real point is that the fuss should never have arisen. These troops present no threat to us. What are they going to do, swim to Florida, are they, and attack us up the beach with their fins? Of course not.

The ironic thing, it seems to me, Mr. President, about this whole affair is as follows: There is a tremendous fuss because there are 2,000 or 3,000 Soviet combat troops which have no way of going anywhere. They have no sealift. They have no airlift.

But people say that if they are only there to train troops, to train Cubans, it is perfectly all right if they are there to train the Cubans to go and attack people all over, wherever they might be. That is satisfactory. But if they are combat troops, that is bad.

It is clearly recognized, Mr. President, no matter whose statistics we take, that they have been there a long time.

The PRESIDING OFFICER. The Senator's time has expired.

The PRESIDING OFFICER (Mr. HEFLIN). Under the previous order, the Senator from Michigan (Mr. RIEGLE) is recognized for not to exceed 15 minutes.

Mr. CHAFEE. Will the Senator yield me 3 minutes?

Mr. RIEGLE. I am delighted to yield 3 minutes to the Senator.

Mr. CHAFEE. I thank the Senator very much.

Mr. President, let us look at what the United States has around the world.

We have about 4,500 uniformed military personnel in Turkey. Then, of course, we have the 2,000 uniformed military personnel in Guantanamo Bay, by right, by treaty, for many years.

But the point, it seems to me, Mr. President, is that we are getting diverted from the main object. I mean, what principally concerns this Nation is the SALT treaty.

Now, there are some against it and some for it. But, certainly, it ought to be debated—that is the big league, SALT.

Let us not get diverted from talking about what is important to this Nation, for the future of the country, for the future of our children and grandchildren, by some 2,000 or 3,000 Soviet troops.

Mr. President, when we look at a picture from the air, how do we tell combat troops from training troops?

That must be one of the most skillful things undertaken by our intelligence in many years.

So they have 40 tanks. They are not amphibious. They cannot crawl all the way to Florida.

Mr. President, I just hope we can put this into perspective.

I do not think the President has come out of this very well. But that is neither here nor there. The point is, they are no threat to the country. They have been there for years. Let us get back concentrating on what counts.

I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I assume that only the time the Senator from Rhode Island actually consumed will be taken from my time.

I now yield 2 minutes to the Senator from Nebraska.

Mr. ZORINSKY. I thank the Senator from Michigan.

SOVIET TROOPS IN CUBA

Mr. President, if I were a cynic I would stand before the Senate today and note the groudswell of concern from the four corners of the Earth about 2,000 to 3,000 Soviet soldiers in Cuba. I would, for example, highlight the cry for help emanating from Mexico City, Tokyo, New Delhi, Ankara, and London. The message, I would announce, is the same for all quarters—"Save us from those Soviet troops stationed in Cuba."

But, Mr. President, being a realist, I have to recognize the situation as it exists. Instead of concern there is disinterest, and instead of a cry for help there is a plea for sanity. And the message is that the rest of the world greets this episode with boredom, if not dismay. Indeed, once you get beyond the beltway you find Americans scratching their heads and wondering why they are supposed to be concerned. Americans have pride in their country and confidence in its military establishment. After 4 weeks, they are still waiting for those who have nurtured this crisis to explain what it is they have to fear.

With no plausible explanation at their fingertips, the crisis-mongers have turned to the SALT II treaty and endeavored to join the two. It is as though we should bestow our acceptance of SALT upon the Soviets in return for their withdrawal from Cuba. I, for one, am unwilling to hinge my support for the SALT II treaty on this kind of flimsy if not irrelevant, condition. While some may perceive such a trade as adequate protection of American strategic interests, I do not. If SALT protects the U.S. strategically, then it should be accepted. If the treaty is adverse to our interests, then it must be rejected regardless of what the Soviets do in Cuba or anywhere else for that matter.

Mr. President, I do not wish to belabor the matter further. The long and short of it is that, yes, for the last several weeks "Chicken Little" has been lose in Washington but no, the sky is not falling. It is time now to confront reality. The reality is that the Senate is constitutionally charged with passing judgment on an agreement to limit nuclear arms, and 2,000 to 3,000 Soviet troops do not exempt the Senate from making this difficult decision. The American people deserve to hear a public debate on the merits and demerits of the SALT II treaty, and to receive the decision of its elected officials. That is what they pay us for. So let us get on with it.

Mr. RIEGLE. I thank the Senator from Nebraska.

Does the Senator from California seek time?

Mr. CRANSTON. Four minutes.

Mr. RIEGLE. I yield 4 minutes to the Senator.

Mr. CRANSTON. I thank the Senator.

Mr. President, over the past few weeks, we in the Senate have learned that the Soviet military personnel in Cuba have been there for some time and that they do not constitute a direct military threat to the United States.

Indeed, the United States has overwhelming military power in the Caribbean, including a permanent military installation on Cuba itself—one which has served as the training ground for the United States naval fleet of the Atlantic since 1943.

If anything, the Cuban or Soviet military threat to the United States in the Western Hemisphere has greatly decreased since the 1960's when tens of thousands of Soviet troops were based in Cuba and military equipment was being shipped there in increasing numbers.

In sharp contrast to this relatively insignificant current threat is the steady rise in the deadly power of the Soviet and United States nuclear arsenals since the 1960's. Even the SALT I agreement proved hardly more than a minor irritant to the crushing momentum of advanced nuclear weapons technology which allows each side to add new warheads virtually daily even within arms control limits. This is the threat with which we must concern ourselves today. This is the legacy we must not leave to our children.

I challenge any Senator to demonstrate to the Senate and to the American people how he or she can better protect U.S. national security in the face of this ever-growing threat by rejecting the SALT II treaty in response to the nonthreat posed by a miniscule conventional military capability based in Cuba with neither the airlift or the sealift to bring it to our shores.

I challenge any Senator to specify what he or she would be willing to give up or to pay in order to force the dispersal of Russian troops or the dismantling of Russian tanks in Cuba.

Should we give up Guantanamo Bay? If so, where will you have the Atlantic Fleet train? Will you recommend that the United States abandon the Western Euopean based nuclear weapon modernization program which directly threatens the Soviet Union?

On the other hand, should we invade Cuba to oust the Soviet troops? Should we put a blockade around Cuba? Should the United States threaten nuclear retaliation?

I have not heard anyone make these suggestions, which clearly lack great wisdom. But, I have not heard other suggestions that might be any wiser as to what

we should be doing to force those troops to be removed.

Let us set aside false hopes of coercion and the emotion and illogic of false linkage. Let us take the hard, practical steps available to us today to meet the real threats we face from the Soviet Union.

First, let us support the restrained and reasonable demonstration of our existing strengths and interests in the Caribbean which President Carter has proposed. Second, let us move ahead with favorable consideration of the SALT II Treaty—for it is the only direct way I know of by which the United States can lessen the strategic nuclear threat of the near future.

For example, it is the only way I know of to keep the Soviet Union from putting more than 10 warheads on its one new type of ICBM;

Keep the Soviet Union from putting up 30 warheads on its heavy ICBM's instead of only 10;

Limit the Soviet Union to 2,250 strategic weapons systems when it could easily produce 3,000 by 1985; and

Achieve force reductions, though small, instead of increases in Soviet strategic forces.

These are the specific opportunities open to the Senate, open to the country, open to mankind. And any Senator who believes that the United States can better protect its national security interests without them bears a heavy burden to recommend specific achievable alternatives.

I think it appropriate to note what His Holiness John Paul II said yesterday in our country. He stated:

> We are troubled also by reports of the development of weaponry exceeding in quality and size the means of war and destruction ever known before. In this field also we applaud the decisions and agreements aimed at reducing the arms race. Nevertheless, the life of humanity today is seriously endangered by the threat of destruction and by the risk arising even from accepting certain 'tranquilizing' reports.

Finally, I would like to say a word about the President of the United States.

I think it would be wise to grant that a mistake was made in making the statement about the status quo not being acceptable. That was stated first by the Secretary of State. It was restated by the President of the United States. Nonetheless, I think a case can be made that the status quo has been changed by our actions.

When we change the status quo, it involves a change in the military situation, in the matters relevant to this discussion, and that has been changed by steps the President announced he will take in the Caribbean.

Finally, I note that it is frequently said that a leader of a nation in times of political difficulties may often seek a foreign diversion and seek to show great strength, great manliness, great "macho," in order to retrieve his political situation. I suspect that the President received some political advice to do just that in this situation. I respect him tremendously for putting his country first in the light of his judgments. I respect him for resisting that advice or that temptation and putting first what he deems to be the national security interests of our country, by taking the very restrained and very moderate but nonetheless effective steps that he took in relation to this situation.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. CRANSTON. I do not have any time remaining.

Mr. TOWER. Will the Senator yield some time?

Mr. RIEGLE. The Senator spoke for 15 minutes earlier today.

Mr. TOWER. Only 5 minutes.

Mr. RIEGLE. It seemed like 15. [Laughter.]

If I could finish with the Senators with whom we have made arrangements to speak and if we have time remaining, I would be happy to yield.

Mr. TOWER. I hope some of them will stick around.

Mr. RIEGLE. I yield to the Senator from Michigan.

Mr. LEVIN. Mr. President, I have been listening very carefully for the past several weeks as my colleagues have debated when and whether we ought to begin consideration of SALT II. That debate has been helpful but I do not believe it should deter us further. There is, we are told, a time and a place for every purpose. This Nation's purpose is peace. The Constitution teaches that the Senate is the place to discuss it. And I rise to join my colleagues in saying that the time for the Senate to discuss it is now.

Some disagree with that judgment. They point, for example, to the Soviet brigade in Cuba and say that until it is removed, debate and decision should be delayed. They seek to link our deliberations to factors unrelated to the purposes of the treaty itself.

I fail to understand the logic of this linkage.

If the treaty is a gift to the Russians, a present to be withdrawn if they misbehave, then we ought to reject it and renounce it. But if the treaty is a gift to ourselves, a present whose value can be verified, then we should accept it and adopt it.

For me, the issue is clear: Is SALT II as a strategic arms control agreement, in our own national self-interest? If it is, then why should we deny ourselves its advantages, because the Cubans or Soviets seek to contest us in areas not related to strategic arms control? The other side of the coin is equally true: If it is not in our national self-interest, should Soviet or Cuban restraint motivate us to adopt it?

Those who ask for an environment free of superpower tension before SALT is considered fail to realize that SALT cannot produce, and should not be asked to produce, a world of harmony and understanding. With or without SALT, our relationship with the Soviet Union will continue to be what it is: A delicate dance of conflict and cooperation.

Assuming that SALT is in our national self-interest and that its conditions are adequately verifiable, actions by our Government or the Soviets unrelated to the limits it imposes, cannot reduce its value. If the Soviet brigade in Cuba is a source of concern—and I believe it is—it is of concern whether we each have 10,000 nuclear warheads or whether we each have 20,000. But as we face that brigade and other incidents like it, I would prefer we do so at the lower levels of mutual annihilation.

Ratification or rejection of SALT will not alter the appropriate available responses to Soviet action. And Soviet action unrelated to strategic nuclear weapons ought not alter our decision to ratify or reject SALT.

The only thing that should affect that decision is debate in this body about the nature of SALT. The Constitution mandates such a debate. It requires that the Senate give its advice and consent to any treaty before it goes into effect. In the past, this body has discharged that solemn duty with dignity, with wisdom, and with statesmanship. We have put aside partisan politics and regional differences and focused on our highest duty: to serve the best interests of this Nation. A failure to consider SALT soon is simply a way of shirking this duty—it is a way to condemn the treaty without considering it. It is a way this body should not take. It is a way this Nation should not accept.

We may, in the end, reject this treaty. But let us do so because we have examined it and found it wanting and not because we held it hostage and waited for a ransom that was unreasonable to expect and which other nations refused to pay.

If there is logic in linking the presence of a Soviet brigade in Cuba to the question of whether we should ratify SALT, then let the logic of that linkage be put to test in a debate on whether to ratify—not in a debate on whether to debate.

The time to begin our examination is upon us. I urge my colleagues to focus on the task that confronts us and to begin to judge the Strategic Arms Limitation Treaty as a strategic arms limitation document and not as the best or only path toward other desirable goals.

Mr. President, I yield the remainder of my time to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I take that to mean that the 15 minutes subsequently to be allocated to the Senator from Michigan, he desires to yield to me.

Mr. LEVIN. That is my intent.

The ACTING PRESIDENT pro tempore. The time has now been transferred.

Mr. RIEGLE. Mr. President, how much of my 15 minutes remains?

The ACTING PRESIDENT pro tempore. The time of the Senator has just expired.

Mr. EAGLETON. Mr. President, I yield 3 minutes to the distinguished Senator from Maryland (Mr. MATHIAS).

Mr. MATHIAS. I thank the distinguished Senator from Missouri for yielding me this time.

Mr. President, this morning, the editors of the Sun, a great newspaper published in Baltimore, begin their lead editorial by saying:

> This country's response to the discovery of a Soviet combat brigade in Cuba is a major national embarrassment that reflects poorly on President Carter and legions of American politicians trying to exploit the issue for a variety of purposes.

They conclude that editorial by saying:

> Damage limitation was the object of the President's Monday night speech, as he

sought to recover from self-inflicted wounds, and it ought to be the leading impulse in the Senate. For once, President Carter was right on target when he said the greatest danger to U.S. security is not a few thousand Soviet troops in Cuba but "the breakdown of a common effort to preserve the peace, and the ultimate threat of a nuclear war."

Mr. President, I think there is some positive fallout from this whole unhappy situation. One of the elements of positive fallout, it seems to me, is the President's proposal to increase the surveillance by United States intelligence forces of the Caribbean area. That surveillance in recent years has fallen temporarily to a dangerously low level, so the President is right in proposing to improve our intelligence capabilities in that area.

I think this is a good thing, because, if, as the Soviets and the Cubans insist, this is not a combat brigade, we will be able to perceive that they are right or prove that they are wrong. Even if they are wrong now, let us hope that they will be right in the future, and we ought to competent to be sure of that.

As Dr. Samuel Johnson, the great moralist of the 18th century, said:

Nothing is so conducive to a good conscience as the possibility of being observed.

The Soviet Union and Cuba can be well assured that they will be observed closely in this matter in the days and months ahead.

More than that, I believe that this question has focused some attention on the economic needs of the Caribbean. We have desperately poor people in the Caribbean.

The ACTING PRESIDENT pro tempore. The Senator's 3 minutes have expired.

Mr. EAGLETON. I yield the Senator 1 additional minute.

Mr. MATHIAS. The President has proposed, as part of our program for response to the political needs of the Caribbean, that we will give some greater attention to the economic problems of the Caribbean nations.

This is absolutely necessary because the Soviet brigade is not a military threat. No one thinks it is a military threat. But it is a political problem, not a domestic partisan political problem, but a political problem in the sense that it introduces concern and tension among the peoples of the Western Hemisphere.

If we can help to resolve that political problem by political means, then the threat of that Soviet brigade will be vastly reduced.

In this connection I am moved to applaud the great speech, the moving speech that was given yesterday by His Holiness, Pope John Paul II, before the United Nations in which he referred to human rights among which he enumerated "the right to food, clothing, housing, sufficient health care, adequate working conditions, and a just wage and rest and leisure," all of these things which are denied to so many of the peoples of the Caribbean nations.

These elements of life identified by the Pope as basic human rights are essential ingredients of the solution to the political problems of the whole Caribbean area. When they receive the attention the Pope advocates as a matter of universal human responsibility, the threat of the brigade will recede.

Mr. President, in conclusion, I ask unanimous consent to print in the RECORD an editorial entitled "Limiting the Damage" from today's Baltimore Sun.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LIMITING THE DAMAGE

This country's response to the discovery of a Soviet combat brigade in Cuba is a major national embarrassment that reflects poorly on President Carter and legions of American politicians trying to exploit the issue for a variety of purposes. If SALT II falls victim to this imbroglio, let not the White House point an accusing finger at opposing senators. They indeed will have to answer for their votes against the process of trying to curb the nuclear arms race threatening mankind. But the Carter administration will have plenty to do just to atone for its own ineptitude and miscalculation.

Consider what a spectacle the United States has made of itself on the world stage. The Kremlin must be getting a lot of quiet enjoyment over having faced down Mr. Carter by refusing to change a status quo that he had declared "unacceptable." Leftist elements in Latin America must be getting ready to depict the beefing up of U.S. Caribbean forces as a return to Yanqui imperialism. Our major allies must be disquieted by the turmoil in Washington and the thought that so great an initiative as SALT could be endangered by so peripheral an issue.

The Soviet-Cuban military alliance is, of course, a serious problem for this country. One need only consider the use of Cuban troops in Africa or the conduct of Cuban agents and diplomats worldwide to appreciate how Fidel Castro serves Moscow's purposes. But it hardly serves U.S. interests to respond by endangering top-priority efforts to limit nuclear arms or by offering a degree of military protection to Latin America that may no longer be appreciated. Despite some military maneuvers on Guantanamo in the next few weeks and the establishment of a "Permanent, Fulltime Caribbean Joint Task Force Headquarters" in Key West, we suspect the Carter White House would be relieved to have this whole sorry episode fade away. Unfortunately, it will not be so easy. Republicans have a certified issue for the 1980 political year, especially if Mr. Carter is renominated. Military hawks have a new opportunity to push up defense spending as the administration bows to demands for an added aircraft carrier and more Rapid Deployment Forces. And the Soviet-Cuban issue will remain at the heart of the SALT II debate—where it does not belong—until some magical formula is concocted to permit a few key waivering senators to vote for ratification.

Damage limitation, as Senator Mathias had suggested, is the task of the moment. This was the object of the President's Monday night speech, as he sought to recover from self-inflicted wounds, and it ought to be the leading impulse in the Senate. For once, President Carter was right on target when he said the greatest danger to U.S. security is not a few thousand Soviet troops in Cuba but "the breakdown of a common effort to preserve the peace, and the ultimate threat of a nuclear war."

Mr. EAGLETON. Mr. President, I thank my colleague.

I yield 1 minute to the distinguished Senator from Michigan, Senator RIEGLE.

Mr. RIEGLE. Mr. President, like other colleagues who have spoken this morning, I am also in general agreement with the position President Carter has taken on the issue of Russian troops in Cuba. I believe his response is a reasonable one. I think it is prudent and appropriate to the situation.

After studying the information available concerning the brigade of Soviet troops deployed in Cuba, apparently present there for some several years, I personally do not feel that this matter has any significant bearing on the SALT II consideration.

I think the SALT II treaty should be considered on its own merits as a reciprocal formula for limiting the continuing buildup of strategic weapons by both countries. The ultimate strategic meaning of the SALT II treaty——

Mr. TOWER. Mr. President, will the Senator yield for a question at that point?

Mr. RIEGLE. When I finish I will be happy to yield.

The ultimate strategic meaning of the SALT II treaty is of a scale and consequence, that attempts to link it to the Russian brigade in Cuba is, in my judgment, nonsense or worse.

The opponents of the SALT II treaty have tried one device after another for months now to kill this treaty. That they should repeat the same tactic with the Russian brigade in Cuba should surprise no one. Anyone who finds comfort in accelerating the development and proliferation of nuclear weapons really should have their head examined.

SALT II should be considered in its own right and accepted or rejected on its merits.

Frankly, the opponents of SALT II have not been successful thus far in discrediting the treaty on its merits. That is why we have seen attempts to cripple it in other ways with amendments, reservations, side issues, and now Russian troops in Cuba, and I am frank to say I expect other things. When this particular tactic fails, I fully expect that we will see the opponents reach for another tactic that will be invented in the future.

The fact is, that America's vulnerability today does not stem from too few nuclear weapons. Our vulnerability in this country today stems from inflation, the absence of a national energy strategy, and the financial difficulties facing millions of our citizens struggling to cope with the rising cost of living and recession.

In the military area, our deficiences, and we have some, are also not in the areas of strategic weapons.

I think the best article in today's paper on that subject is on the front page of the Washington Post where it talks about the fact that in terms of our conventional militray capabilities, we are way behind, and there is some question as to whether we could even respond in a conventional manner to a threat if we had to. Those are the kinds of issues we should be talking about.

But in terms of weapons systems, I have here a sheet prepared by the Department of Defense which I wish to print in the RECORD, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the information was ordered to be printed in the RECORD as follows:

DISTRIBUTION OF COST CHANGES BETWEEN DEVELOPMENT ESTIMATES AND CURRENT ESTIMATE BY CATEGORY OF CHANGE AS OF MAR. 30, 1979

[In millions of dollars]

Weapon system	Base year	Program changes in program base year constant dollars: Quantity changes This qtr.	Quantity changes To date	Engineering This qtr.	Engineering To date	Support This qtr.	Support To date	Schedule This qtr.	Schedule To date	Estimating This qtr.	Estimating To date	Contr. cost overrun This qtr.	Contr. cost overrun To date	Other[1] This qtr.	Other[1] To date	Total This qtr.	Total To date	Prog. chg. related escalation[2] This qtr.	Prog. chg. related escalation[2] To date	Economic escalation This qtr.	Economic escalation To date	Total cost changes This qtr.[3]	Total cost changes To date
ARMY																							
Patriot (fire sections)	1972	−5.9	−1,384.1		−551.1	5.9	143.1		237.6		442.3		24.5			0	−1,087.7	0	30.4		1,448.7		391.4
Pershing II	1979																						
Hellfire	1975		−1.1		5.3	1.0	−1.2		6.0		.7					1.0	9.7	.3	10.2		60.6	1.3	80.5
CH-47 modernization	1975										2.7						2.7		3.2		211.1		217.0
UH-60A (Black Hawk)	1971		−20.2		−25.1	.6	−130.2	1.1	−65.4	−0.1	−16.6	1.7	12.2		1.2	3.3	−243.9	2.7	114.6		1,472.7	6.0	1,343.4
YAH-64 (AAH)	1972				9.5	1.1	−40.7		27.3		2.3					1.1	−1.6	.9	18.5		407.9	2.0	424.8
SOTAS (division sets)	1979				4.6					−1.0						−1.0	4.6	−.1	1.0		11.3	−1.1	16.9
FVS (MICV)	1972	51.6	1,235.1	−2.3	290.1		26.7	.8	13.9	−6.2	25.7	3.5	10.5		−.8	47.4	1,601.2	190.9	3,879.6	25.0	278.0	263.3	5,758.8
XM-1	1972		1,578.3	4.0	45.9		9.9		96.5		278.3					4.0	2,008.9	2.2	3,556.8		580.5	6.2	6,146.2
Roland (fire units)	1975		17.8		21.3		40.7		27.4		492.8		60.8				660.8		405.6		123.8		1,190.2
Copperhead (CLGP)	1975	−1.7	−96.6		11.5		8.0		−6.2	1.4	35.2	1.7	3.9	−1.4	.7	0	−43.5	0	97.7		80.5		134.7
DIVAD gun	1978		59.5			−48.2	−4.7			48.2	27.3					0	82.1	0	7.2		54.2		143.5
M-198	1972		−29.6		1.4	.6	1.2		2.8	.6	26.5				0	1.2	2.3	.8	.4		55.7	2.0	58.4
NAVY																							
E-2C	1968		698.7		70.9		247.4		35.9		74.3				0		1,127.2	.1	1,220.6		83.1	.1	2,430.9
F-14A	1969		1,379.7		61.1	−10.0	779.6		317.7	10.8	422.6		60.8		4.7	.8	3,026.2	−.6	2,674.3		342.3	−.2	6,042.8
F-18	1975		3,079.6		80.0		893.9		168.7		284.2						4,506.4		5,430.7		1,210.9		11,148.0
P-3C	1968		964.9	5.7	261.1	2.2	−67.6		414.2	−5.5	99.3		4.3			2.4	1,676.2	.8	2,240.1		283.3	3.2	4,199.6
Lamps MK III	1976		8.4		−72.3		−86.2		−27.5		−13.6						−191.2		−186.0		48.5		−328.7
Aegis	1970				63.6		13.3		32.7								109.6		69.5		23.9		203.0
Captor	1971		−6.4		107.4		75.6		63.3		172.9		.1				412.9		545.9		233.2		1,192.0
Harm	1978		−15.9		12.0				3.2								−0.7		8.5		21.0		28.8
Harpoon	1970	51.6	−2.4		96.5		35.6		20.8	−.5	54.0					51.1	204.5	68.7	454.8	−3.7	256.6	116.1	915.9
Phoenix	1963	26.0	113.9		38.1		28.7		174.1	−.1	4.3		42.9	7.1	9.6	33.0	411.6	44.0	694.6		219.8	77.0	1,326.0
Sidewinder AIM-9L	1971		18.5		19.2		28.0		21.0		32.8		.9		−1.3		119.1		102.2		25.7		247.0
Sparrow AIM-7F	1968		−149.0		33.5	−2.5	22.4		132.9	.2	23.9				28.9	−2.3	92.6	−2.4	210.0		323.9	−4.7	626.5
Tomahawk	1977		−651.9		83.7		−95.8		32.1		53.1						−578.8		−294.4		1.6		−871.6
Trident	1974		1,604.8		68.7	.6	28.4		799.5	−.6	911.4		232.6		40.7	0	3,686.1	0	6,021.4		3,406.8		13,114.3
MK-48 MOD 1	1972		−480.4		9.0		−78.3		118.5	−.8	139.4					−.8	−291.8	−.5	156.3		89.7	−1.3	−45.8
5-in guided proj	1977		−2.5		6.1			6.6	11.6							6.6	15.2	1.1	2.5		7.5	7.7	25.2
SURTASS	1975				36.8		5.3	.2	15.6		57.5		7.2			.2	122.4		90.1		43.7	.2	256.2
TACTAS	1976		−69.0		63.9		57.9		29.0		−1.1				2.0		82.7		102.7		96.2		281.6
SSN-688	1971		924.0		59.6	1.4	−4.5		14.6	3.1	−342.7				298.5	4.5	949.5	2.4	2,255.7		1,860.4	6.9	5,065.6
DD-963	1970		82.1		14.7		12.0		−2.0		38.9		94.0		53.9		293.6		855.3		622.5		1,771.
DDG-47	1978				185.3		6.1				103.3						294.7		159.5		337.0		791.4
CGN-38	1970		191.7		11.2		−1.5				34.8				28.3		264.5		173.0		50.6		488.2
LHA	1969		−436.9		53.1		25.1		10.8		10.5		80.1		203.7		−53.6		276.3		70.0		292.1
FFG-7	1973	−79.2	826.0		502.5		66.6		205.7		890.5					−79.2	2,491.3	−124.1	4,144.0		2,231.9	−203.3	8,867.7
PHM	1973/74		−482.7		0.1		.4		74.0		19.1		24.7		1.3		−363.1		16.9		12.0		−331.2
CVN-68 class	1967/72				96.0		17.1		42.6		3.1		102.3		19.8		280.9		101.8		356.4		739.2
AIR FORCE																							7
A-10	1970		0		165.7		34.3		326.3	−.2	−24.2				22.8	−.2	524.9	−.1	909.8		898.0	−.3	2,332.7
F-15	1970				233.1		−21.8		740.2	−.5	−126.5		62.7		556.4	−.5	1,444.1	−.4	1,306.1		3,197.6	−.9	5,947.8
F-16	1975		2,946.7	−6.4	267.1		1,054.4			−.2	−116.7		−.7		23.6	−6.6	4,174.4	−1.7	3,312.5		1,543.1	−8.3	9,030.0
E-3A (AWACS)	1970		−62.5		33.0		−22.8		595.4	−.2	−148.5		−2.2		−5.2	−.2	387.2	−.2	775.0		341.5	−.4	1,503.7
E-4 (AABNCP)	1974		−196.6		17.4		−21.4		80.8		85.0						−34.8		−25.3		57.8		−2.3
EF-111A	1973				−14.0		62.9		126.4		62.7		8.7				246.7		267.2		16.8		530.7
PLSS	1977		−394.9		−2.1		−85.2		17.4	.3	6.5					.3	−458.3		−233.7		5.9	.3	−686.1
Harm (AGM-88)	1978		72.1								35.2						107.3		76.7		32.8		216.8
Maverick (IIR)	1975		26.7				−.6		15.1		−35.3						5.9		173.2		86.1		265.2
Sidewinder AIM-9L	1971		68.0		8.5		14.5		10.3	.3	80.7		1.2			.3	183.2	.2	130.5		58.0	.5	371.7
Sparrow AIM-7F	1968		139.5		7.2		6.1		101.2	.2	−0		1.4			.2	255.4	.1	234.2		149.0	.3	638.6
DSCS III (space seg)	1977				15.8						−42.8						−27.0		−32.1		14.7		−44.4
ALCM	1977		−15.1		84.8		−22.2		−2.5	−2.8	−6.1	−.2	−.2			−3.0	38.7	−.6	149.7		81.1	−3.6	269.5
GLCM	1977		−1.2	−9.7	3.5		10.4		6.7	9.0	35.3					−.7	54.7	−.2	105.0		15.8	−.9	175.5
SUMMARY																							
Army		44.0	1,359.1	1.7	−186.6	−39.0	53.0	1.9	339.9	42.9	1,317.2	6.9	111.9	−1.4	1.1	57.0	2,995.6	197.7	8,125.2	25.0	4,785.0	279.7	15,905.8
Navy		−1.6	7,595.2	5.7	1,961.8	−8.3	2,009.5	6.8	2,709.0	6.6	3,072.5	0	649.9	7.1	690.1	16.3	18,688.0	−10.5	27,526.3	−3.7	12,258.5	2.1	58,472.8
Air Force		0	2,582.7	−16.1	820.0	0	1,008.6	0	2,017.3	5.9	−194.7	−.2	70.9	0	597.6	−10.4	6,902.4	−2.9	7,148.8	0	6,498.2	−13.3	20,549.4
Grand total		42.4	11,537.0	−8.7	2,595.2	−47.3	3,071.1	8.7	5,066.2	55.4	4,195.0	6.7	832.7	5.7	1,288.8	62.9	28,586.0	184.3	42,800.3	21.3	23,541.7	268.5	94,928.0

[1] Other includes unpredictable, contract performance incentive, and miscellaneous changes.

[2] Escalation associated with program changes estimated from the base year of the program involved. The escalation related to each program change and the cost of the program change in base year dollars make up the cost of the program change in then year dollars (the actual or current cost of the change).

[3] Does not include an additional cost increase reported this quarter of $481.0M ($267.2M base-year dollars and $213.8M escalation) for the FVS (MICV) program. This amount is excluded from this table because it is a change to the development estimate and not a cost variance category. This amount is included in the "SAR program acquisition cost summary."

Note: 53 programs—total cost growth is $95 billion over lifetime of R. & D.

Mr. RIEGLE. Mr. President, this sheet shows all the present weapons systems for which the United States is now spending money. And the cumulative cost overruns to date now total some $95 billion.

So there is an enormous waste, gold-plating, inefficiency, and misdirection of resources with the money that we already spend with respect to our military capability.

But I am frank to say that the people who have this preoccupation with strategic weapons alone apparently cannot think in terms of an overall defense capability or in terms of national security that can fit that into a context of the broader definition of national interest that has to do with problems that are affecting people every day here in the United States.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. EAGLETON. Mr. President, the Senator from Texas well knows we are under very secure time constraints. Since I am in charge of the allocation of time, Senator STENNIS must have a minute and a half on a related subject, and we cannot yield at this time.

Mr. RIEGLE. Mr. President, as I stated at the outset, I agree with President Carter that the presence of some 2,000–3,000 Soviet troops in Cuba, does not pose a security threat to the United States. Appropriate U.S. diplomatic efforts should proceed with the Soviet Union to pursue the matter to a conclusion that is consistent with U.S. security interests.

That task is not an assignment for the Senate Foreign Relations Committee, Congress, or Presidential contenders, among others; it is the proper responsibility of those directly charged with the administrative duty of conducting American foreign policy.

Those of us with constitutional responsibilities for oversight of American foreign policy can fully meet these responsibilities without attempting to usurp the proper role of the President and his Secretary of State.

This is neither a time, nor a situation, in which hysteria or exaggerated responses by either side are warranted or useful.

At a moment when the American Presidency is in a severely weakened domestic political posture, we must, as a nation, remain calm and prudent. We must not let domestic political adventurism distort our national judgment or alter the prudent exercise of American diplomacy and other power initiatives.

The United States today has sufficient strength in all forms to appropriately deal with any strategic threats posed by the Soviet Union. The Soviet Union should have no illusions about the ability and willingness of the United States to use whatever resources are necessary to promptly and fully defend our strategic interests—in this hemisphere and others.

Finally, we should have no illusions about the Soviet Union. They are a determined and dangerous adversary who will attempt to take full advantage of any situation ripe for exploitation. We would be foolish to expect anything but unremitting pressure from the Soviets, and we must plan and act accordingly.

Mr. EAGLETON. Mr. President, I yield a minute and a half to the distinguished chairman of the Armed Services Committee, Senator STENNIS, who wishes to make an announcement.

Mr. STENNIS. Mr. President, I certainly thank the Senator from Missouri.

Mr. President, we have been trying to arrange, and when I say "we" I mean the members of our committee, which certainly includes the ranking minority member, Senator TOWER, for a resumption of the so-called SALT hearings by our committee.

We had in mind if possible to open those hearings up for this week, but we have decided to go over until next week partly because of the now pending energy bill or bills. We have settled on starting next Tuesday, October 9. I have completed a list of witnesses, most of whom were carried over from the former hearings. Some will now be held in closed sessions. There will be a few more. These lists represent the desires of the committee as a whole, I think, as witnesses.

Not flattering our committee one bit, I think our hearings have contributed to an understanding of the problems particularly as they relate to our military policies.

I think the forthcoming continued hearings will be of the same caliber, and I believe they will be helpful to anyone in making up their, mind as to what their final position will be.

So we will have the hearings open where possible, and closed where we must. We expect to proceed to try to get through within 5 or 6 days.

I think we should face the situation then, and bring this matter to the floor for full debate and a decision. We have grave problems at home and abroad that delay will not cure. To the contrary, I am afraid the situation will become more involved and possibly suffer from delay.

Mr. EAGLETON. Mr. President, I thank my colleague.

Mr. President, for the past 18 years, ever since the United States severed diplomatic and economic ties with the Government of Cuba, we have been at odds with our island neighbor. Our relationship has vacillated between periods of extreme strain and relative calm. We have swung between incidents like the 1962 "missile crisis," which brought us close to the brink of war, and the signing of the 1973 antiskyjacking agreement, which signaled a genuine interest in normalizing relations.

During the Carter administration, the movement toward the normalization of United States-Cuban relations has intensified. The United States has removed the ban on travel and spending of U.S. currency in Cuba, and the Cubans took the initiative in proposing the fishing talks with the United States. As summer began, the United States and Cuba were closer to a normalized relationship than at any time during our 18-year estrangement.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. EAGLETON. I am sorry, I cannot yield at this time. I have to complete my remarks and the Senator from Alabama needs a minute.

Then came the events of August—the disclosure of a U.S. intelligence assessment that a Soviet brigade was conducting maneuvers on the island, and the pandemonium which ensued in the media and in the Halls of Congress. Some even have gone as far as to suggest that the SALT treaty should be scrapped if the Soviet troops in question are not removed from Cuba.

Mr. President, let me make myself clear on this matter. I am concerned over the presence of Russian combat troops a mere 90 miles from our shore. But, I hasten to add, I do not believe we are living a crisis. I do not find these times even remotely reminiscent of the 1962 missile facedown.

Considering the fact that there were as many as 20,000 Russian troops in Cuba in the early 1960's, and considering the fact that the Russians have maintained a military presence of varying size in Cuba ever since then, it is ludicrous to consider the presence of 2,000 to 3,000 Russian troops in Cuba as any kind of imminent threat to ourselves or to this hemisphere.

Mr. President, this issue has been blown into a matter of such enormity that one would think we are on the brink of some international catastrophe. In truth, Mr. President, the current controversy comprises much too much ado over something that is neither all that new nor all that earth-shaking.

I remain undecided on ratification of SALT II. However, I remain firmly committed to the proposition that SALT II should rise or fall on its own merits or lack thereof. The current frenzy over Cuba should not, in my opinion, impact upon the thoughtful and rational analysis which SALT II deserves.

Mr. CRANSTON. Mr. President, will the Senator from Missouri yield me 30 seconds?

The ACTING PRESIDENT pro tempore. The time of the Senator from Missouri has expired.

Mr. CRANSTON. I want to pay tribute to Senator EAGLETON for his leadership.

Mr. EAGLETON. Mr. President, I ask unanimous consent that the Senator from California may have 1 minute.

[Laughter.]

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRANSTON. I want to pay tribute to the Senator from Missouri for organizing this discussion this morning. I think it has been helpful in focusing attention on a very important matter. He always comes through on important issues when they need our attention, and I thank him for doing so today.

Mr. TOWER. Mr. President, will the Senator from California yield for a question?

Mr. CRANSTON. I have about 20 seconds, yes.

Mr. TOWER. Does he really call this a discussion? We have really had very little dialog here. It seems like we have had a lot of monologs here, but I hardly call it a discussion.

Mr. CRANSTON. I wish we had more.

Mr. ROBERT C. BYRD. Mr. President,

if the Senator will yield, the first monolog I heard today was the monolog ably conducted by my friend from Texas.

Mr. TOWER. I was fully prepared to yield for questions throughout the course of it. No one asked any.

Mr. ROBERT C. BYRD. He had a 15-minute order and did not consume it. I am sorry he did not.

Mr. TOWER. I shall ask for 15 minutes more tomorrow.

● Mr. MUSKIE. Mr. President, President Carter's comments on the question of Soviet troops in Cuba, and the steps he outlined in response to the Soviet brigade, were valuable for several reasons:

First, by confirming that the troops do not represent a Soviet escalation in our hemisphere, he did much to allay the deep concern of Americans committed to the principle of Soviet nonintervention here.

Second, by outlining the local and global reaction of the United States, he demonstrated to the Soviets that any action on their part would meet with firm reaction from us in any place important to American interests.

Third, by dealing with the issue in a dispassionate way, he helped cool the rhetoric on the Cuban situation, and I think he accurately concluded that we ought to turn our attention to SALT II, which is much more important to our national security.

It was inevitable that the troop question be linked to SALT II, simply because the troops came to light during a time of intense debate over United States-Soviet relations. The President sent a strong signal to the Soviets that we will protect our interests with every appropriate means at our command. And he sent a signal to the Senate and the country that the real issues of arms control are too important to be sidetracked by a debate over questions of less crucial significance.

I hope the Senate and the country will move now to the real issues of SALT II.●

PRIORITY ENERGY PROJECT ACT OF 1979

The PRESIDING OFFICER (Mr. HEFLIN). Under the previous order, the hour of 10:30 having arrived, the Senate will now resume consideration of the pending business, S. 1308, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1308) to set forth a national program for the full development of energy supply, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The time between now and 12 o'clock noon is equally divided and controlled by the Senator from Connecticut and the Senator from Louisiana. No amendments to amendment No. 488 shall be in order during this period unless they are accepted as germane modifications by the Senator from Connecticut and the Senator from Maine.

No amendments to the reported amendment in the nature of a substitute shall be in order during this period unless they are accepted as germane modifications by the Senator from Louisiana and the Senator from New Mexico.

A vote on a motion to table amendment No. 488 shall occur at 12 noon.

Who yields time?

Mr. SCHMITT. Mr. President, I see the Senator from Connectict is here. Will he yield me 5 or 10 minutes for some general comments?

Mr. RIBICOFF. Is the Senator for amendment No. 488 or against it? I have so many requests for time.

Mr. SCHMITT. This Senator is trying to make up his mind.

Mr. ROBERT C. BYRD. Mr. President, in that case I will yield 5 minutes to the Senator on behalf of Mr. JOHNSTON.

Mr. SCHMITT. I appreciate the Senator's courtesy.

Mr. President, as I said yesterday, my concerns about the creation of an Energy Mobilization Board under which every set of procedures is adopted by this body stem in part from a general concern that the Board may not be able to do what we all hope it will do, and that is streamline the regulatory process to find a balance between the preservation of our environmental heritage and the absolute mandatory need to reduce our dependency on foreign imports of oil and gas.

Mr. President, I spent a fair amount of time in the executive branch of Government in an environment of extremely complex management. As I read the bill, S. 1308, and see the vast charter that is going to be given to this Board, I become concerned that the Board may not be able to carry out that charter in any kind of reasonable fashion.

I had the same concerns about the Department of Energy, and at that time voted against the Department because I did not believe they were going to be able to manage what Congress has told them to do, and that, in fact, they have not been able to manage it. Many who supported the Department of Energy in the last Congress, I think, have had second thoughts about that support today.

My questions yesterday were, and later on in this debate will be, focused on whether or not alternatives have been fully considered to the Board for doing what we all want to do, and that is to accelerate the development in a reasonable way of major energy projects in this country.

Obviously, if we were true to the tradition of this deliberative body and the Congress as a whole, we would look at those problems in law and in regulations created under law that are preventing the development of various energy projects, and we would then work to improve that law by repealing what existed, or by modifying it as required.

Apparently, the Energy Committee and others have generally agreed that this is impossible; that this body and the Congress could never work out satisfactorily the alteration or repeal of substantive law so that these projects could go ahead under existing authorities.

Another alternative might have been to create the Board, but, rather than giving them the mandate this bill would give them, would require them to study existing law and come back to Congress with recommendations on how the bottlenecks could be removed through the legislative process.

I hope that later on in this debate those two alternatives can be discussed further.

Mr. President, having been through an extremely complex process of putting men on the Moon and returning them safely to Earth, I see many similarities in complexity, if not in substance, to what the Board is being asked to do. I ask what are the qualifications of a Board chairman with the various authorities that will be given to that chairman?

The bill, of course, does not discuss this, and I presume it was discussed in committee, but I must say that I would feel much more comfortable if some general qualification had been spelled out in the bill.

Management systems dealing with deadlines and schedules are very important and should be utilized more.

The PRESIDING OFFICER. The 5 minutes yielded have expired.

Mr. SCHMITT. If there is no demand for time, I wonder if the majority leader would continue to yield me 5 more minutes?

Mr. ROBERT C. BYRD. For the moment may I yield 2 minutes. Mr. JOHNSTON is in control of the time, and I do not know how many demands he may have for time. I yield 2 minutes.

Mr. SCHMITT. It is my understanding they are meeting in caucus trying to work things out.

Mr. ROBERT C. BYRD. I yield 3 minutes.

Mr. SCHMITT. I will try to terminate at that point, and I thank the majority leader.

This business of managing schedules is certainly one of the best ways in which we can accomplish various tasks of Government, of trying to meet deadlines and setting goals for ourselves, but it does require, particularly where large numbers of individuals, agencies and variables must interact, very special competency on the part of the managers.

There are not a great number of these people in this country at this time, at least those who have been faced with these kinds of problems. Clearly businesses, large businesses, must meet schedules and deadlines, so that it could be within the business community that we could find that exceptional person who could act as chairman of this Board. It may be that within certain agencies of Government we have seen those kinds of individuals.

But I would hope that if this Board does come into existence, we will encourage in some way or another the President to find that very special person, independent of political persuasion, who can in fact manage a process of this complexity.

Another major area of concern that I hope and I am sure will be debated is whether in fact due process has been protected by the accelerated procedures for judicial review that are contained in the bill. The question there is whether, in the accelerated procedures, not only is due process being protected, but are

we forcing litigation into very narrow channels that will clog those channels?

I do not have an answer to that. I see no discussion in the report of the judicial impact of this measure. I think that is an issue that must be discussed on this floor before we come to a final decision.

Mr. President, I see the managers of the bill on the floor, and I will reserve further comments until later.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. SCHMITT. Mr. President, if the distinguished Senator from Louisiana has no other task in front of him, I would be happy to pursue further some of the questions that I have.

Mr. JOHNSTON. I have very little time. I think I have 35 minutes.

The PRESIDING OFFICER. Thirty-six minutes and seven seconds.

Mr. JOHNSTON. I have a request from the Senator from New Mexico (Mr. DOMENICI) for 10 minutes. I need 15 minutes to wrap up, and we need to accept a Wallop amendment, which will take a little bit.

Mr. SCHMITT. There under those circumstances, I will wait until the determination of the outcome on the Muskie amendment.

Mr. JOHNSTON. I think that might be helpful from the time standpoint. I thank the Senator.

The PRESIDING OFFICER. Who yields time? If neither side yields time, the time runs equally.

UP AMENDMENT NO. 587

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and Mr. DOMENICI, proposes an unprinted amendment numbered 587:

Page 53, line 25, after the period, insert the following new subsection:

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 53, line 25, after the period, insert the following new subsection: "(c) Nothing in this Act shall be construed as denying any Federal, State or local agency the authority, pursuant to applicable law, to disapprove any application for a permit, license, lease or other approval required by applicable law for a priority energy project, except at such time the Board exercises its authority pursuant to subsection (a) to make the decision or perform the action in lieu of such agency.

Mr. JOHNSTON. Mr. President, this amendment is submitted on behalf of myself and the distinguished Senator from New Mexico (Mr. DOMENICI). The amendment, by its words, speaks for itself and states as follows:

Nothing in this Act shall be construed as denying any Federal, State or local agency the authority, pursuant to applicable law, to disapprove any application for a permit, license, lease or other approval required by applicable law for a priority energy project, except at such time the Board exercises its authority pursuant to subsection (a) to make the decision or perform the action in lieu of such agency.

So, Mr. President, in effect what this amendment does is make clear that the Federal, State, or local agency still has the power to say "No." All we are doing by this bill is expediting the getting of an answer, so that the local zoning board, the local permit board, the local building board, the local environmental board, whatever that local board is, or State or Federal board, it shall have the final power to say "No," as under the present law. We do not take away that power to say "No."

What we do do is tell them, "You have got to say no or yes within a reasonable time, and if you refuse to say no or yes in a reasonable time, we are going to decide the matter for you."

That is what the amendment does, Mr. President. It makes it very clear—makes very clear and in effect repeats what we think, frankly, is already clear from the bill, but makes clear beyond any peradventure of any doubt that we do not take away that power.

I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, one of the ghosts that haunts this Energy Committee bill is that it does more than it says. I join with the floor manager on the majority side to clarify that with reference to State substantive law.

I would add, for those who are leaning in opposition to the Energy Committee's bill because of so-called violation of States' rights, to consider that many of those organizations that oppose this bill were not concerned about States' rights when the national legislation that has been passed in the last 10 years was passed. But, so that there will be no opportunity to expedite, they now join in saying that we should have not even the time that it takes for the Federal Government and the States to decide altered, because that is in some way seriously violative of States' rights.

Mr. RIBICOFF. Mr. President, I yield 10 minutes to the distinguished Senator from Colorado.

Mr. HART. Mr. President, the pending substitute, in my judgment, is a far better bill than that reported by the Energy Committee. I join with its sponsors in urging my colleagues to support it.

The substitute bill is a tough, effective measure to keep bureaucratic redtape or delaying litigation from bogging down an important energy project.

To do this, the substitue bill, it establishes an Energy Mobilization Board; it authorizes the Board to pick the energy projects most likely to reduce our imports of foreign petroleum; it puts those projects on a "fast track" requiring all Federal, State, and local agencies to make decisions on all necessary permits according to a quick, binding schedule; it consolidates and shortens requirements for environmental impact statements; and it expedites judicial review of agency decisions.

These are the same legitimate fast-track provisions as those contained in the Energy Committee bill. I think they represent real reforms. These extraordinary new measures cut across all levels of government, to make sure that all agencies marshal their resources to rule quickly on projects necessary to meet our overriding energy needs. These reforms will prevent unnecessary delays of energy projects—whether the delays are caused by government agencies, private opponents to energy projects, or the courts.

However, the substitute bill does this without undercutting laws carefully crafted to protect public health and environment, as the distinguished Senator from Maine has pointed out so eloquently. I think this is the major difference between the substitute, which I support, and the Energy Committee bill.

The most important specific difference between the two versions is that the Energy Committee bill allows substantive waiver of Federal, State, and local laws. Since the Energy Committee did not adopt as sweeping a substantive waiver provision as adopted by the House Commerce Committee, some people have mistakenly thought the Energy Committee did not approve any substantive overrides. This is not true. Section 36 of the Energy Committee bill authorizes the Mobilization Board to waive substantive Federal, State, or local laws. The Board could block any new Federal, State, or local laws or regulations enacted after a project begins construction from applying to that project.

This provision is broad enough to apply to any Federal, State, or local laws or regulations. The EMB would only have to decide that a new law inhibits the "timely and cost-effective completion and operation" of an energy project to keep that law from applying to the project. The Board could suspend new civil rights laws. The Board could suspend new labor laws.

The Board could suspend a new windfall profits tax. The Board could suspend a new State severance tax. The Board could even suspend a new provision in a State constitution.

The only new laws the committee bill explicitly leaves outside the Energy Mobilization Board's waiver authority are State water laws. Although the committee bill does not say so, theoretically, at least, one could presume the Board could not suspend a new amendment to the U.S. Constitution.

We should think about the Constitution as we consider this proposed waiver authority. The waiver would be clearly unconstitutional. Put simply, the Constitution gives Congress the authority to pass laws, the President the authority to execute the laws, and the judiciary the authority to interpret the laws. Nowhere is there room in the Constitution for a new, fourth branch to suspend the laws. That mere thought flies in the face of every fundamental principle on which our Government is based.

There are other reasons, beyond its certain unconstitutionality, to oppose this proposal.

Although the waiver authority is broad enough to encompass all laws, it is clearly intended to provide relief from environmental laws.

At first glance, the idea of barring new environmental controls after a plant has begun construction may seem rea-

sonable. After all, the waiver would not apply to the standards in effect when the plant begins construction.

But environmental standards adopted after a plant is operating may be the most important ones.

Even if we require the control of all known pollutants from an energy plant, we might not learn of the most serious pollution problems until the plant is in operation—just as we did not learn the real hazards of kepone, PCB's, and asbestos until they were in common use. This is especially likely with synthetic fuel plants, where our knowledge is so sketchy. Research done to date suggests the possibility of known and suspected carcinogens being produced during the production of synthetic fuel from coal and oil shale. Our knowledge is not yet great enough to let us say whether these possible problems would ever require new pollution controls.

The best course is to proceed with synthetic fuel production, controlling what we now know presents a health problem, and maintaining the freedom to impose new controls if they become necessary. If, however, the possibility of future controls is barred, we are left with an unnecessary Hobson's choice. We could decide to avoid synthetic fuels and other potentially risky technologies because of the possibility of a future health hazard. This choice, of course, would keep us from meeting our energy needs.

Or, on the other hand, we could proceed with those uncertain technologies, knowing we could discover a significant new health hazard. If we did discover that health hazard, the Government could be blocked by the Energy Mobilization Board's waiver from protecting its citizens. The Government would be unable to insure the safety of plantworkers and neighboring people from the newly discovered health hazard.

If the Energy Mobilization Board can let a plant with unknown technology continue unfettered, no matter what it does to the health of the people living nearby, it would be doing far more than just designating a priority energy project. It would be designating the area around the plant a potential national sacrifice area. It would be putting the energy from a single facility above all else—even if we learn that the facility ruins people's health and destroys the environment.

Mr. President, I think we all know our energy needs are great. But they are not so great that we have to abandon all other national goals in a single-minded pursuit of new energy plants. We do not have to abandon our ability to protect the health, safety, and welfare of our citizens.

The Senator from Louisiana yesterday said that we used to be a "can do" Nation and now we have forgotten how to be that. I disagree with that strongly, Mr. President. I think the people of this country still have as much confidence in themselves and their Government to take the necessary steps to do what needs to be done as they ever did. But times have changed. People are demanding more protection for the environment and for their health. They are demanding more protection for the future generations than we knew, in the 1930's and 1940's, that we needed. I think it is inaccurate to compare the 1980's with the good old days of the 1930's and 1940's, when we were a supposedly "can do" Nation without any of these regards for the quality of life and health and the safety of future generations.

Mr. President, we can have new energy supplies and environmental protection. Perhaps the most stringent environmental standards now in place are the provisions of the Clean Air Act that prevent the deterioration of air quality in relatively clean areas.

The Senator from Maine has detailed the importance not only of these provisions but also how much farther we have to go to solve these problems. We have not solved the clean air problems of this country in many areas, including, unfortunately, on too many days, my own home city of Denver, where we still have air that is unfit to breathe. We have energy problems and we are going to have to solve those and I think the Congress and the people of the United States are committed to that. It does not mean that we have to breathe foul air in the process.

I think what the substitute represents here is the kind of balance between those two national goals that we need.

Mr. President, since these standards were enacted as part of the 1977 Clean Air Act amendments, EPA has considered 76 applications for new coal-fired powerplants, and has approved 75 of the 76 applications. These 75 new plants will increase the use of coal by utilities by almost 25 percent over current levels. The one plant that was turned down has submitted a new application. While EPA has not made a final decision on the new application, the Agency is proposing to accept it. The experience of oil shale plants under the same standards is similar. Of four applications, EPA has granted all four—including one near an area classified for maximum protection under the standards.

So, we can still have major new energy production even under the most stringent environmental controls. These controls, which have not blocked energy development, are likely far stricter than any that would be waived under the Energy Committee bill. All of our environmental laws include the "grandfather" concept—a legitimate grandfather concept, not the substantive waiver the Energy Committee calls a grandfather clause. When passing environmental laws, Congress consistently has decided it is more equitable to set out tough pollution standards for plants that are not yet built than to require retroactive pollution control from existing plants.

Under the legitimate grandfather concept in our existing laws, the major means of Government control over pollution is the permit initially given a new plant, which limits the pollution the plant can produce. Only new sources—or sources undergoing significant expansion or change—must get permits. After a source gets a permit, it is not normally subject to any new or additional standards.

New or additional standards—the kind which would be blocked by the Energy Committee's substantive waiver—are applied to an existing plant only in unusual circumstances when they are necessary to protect the public health. In these rare instances, applying new standards to existing plants lets us protect the public health without crippling the existing industry. An example is vinyl chloride—a gas byproduct of the plastics industry.

In 1974, scientists discovered that vinyl chloride from existing plants posed a serious threat to plastics workers and people living near plastics plants. Using the kind of authority that the Energy Committee bill would let the Energy Mobilization Board block, EPA and OSHA developed new standards for exposure to vinyl chloride. These new standards did not cripple the plastics industry. The new standards did not put a single plant out of business. But the new standards do protect the health of hundreds of thousands of people.

We need this same flexibility to control any newly discovered health hazard produced by energy plants. Without the ability to discover and correct our mistakes, we might have to live—or die—with unnecessary, avoidable health hazards.

The Ribicoff substitute is superior to the Energy Committee bill primarily because the substitute does not include the open-ended, reckless waiver clause in section 36 of the Energy Committee bill. However, there are also many other important differences between the two versions. The Ribicoff substitute is better in every instance. I will mention briefly just the major remaining differences.

COMPOSITION OF THE BOARD

The Energy Committee bill does not really set up an Energy Mobilization Board. Except for the designation of key energy projects and the waiver decision, all decisions made in the name of the Board would actually be made solely by the Chairman of the Board. This Chairman would serve at the pleasure of the President and would not be subject to conflict of interest rules. In effect, the Energy Committee proposes to give a Presidential assistant, who could own stock in an energy company, sweeping powers over Government decisions on approval of energy projects.

The substitute bill would set up a Board in fact as well as in name. The members of the Board would be subject to normal conflict of interest requirements.

AGENCY DECISIONMAKING

Under both proposals, the Energy Mobilization Board would set binding deadlines for all decisions by Federal, State, and local agencies.

Under the Energy Committee bill, if any agency—Federal, State, or local—did not act on time, the Chairman of the Board would step in and make the deci-

sion. This is a bad idea for several reasons.

First, the purpose of the Board is to speed up decisions. Having the Board's Chairman replace the normal decisionmakers would actually slow down the process. The permit application and other information would have to be sent to the Chairman. The limited staff of the Board would have to start from the very beginning, repeating the basic review of the information the agency would already have conducted.

Second, making these substantive decisions would be an enormous drain on the limited resources of the Board, which would have a staff no larger than 50 people. The Board should not waste its time and resources granting permits and ruling on zoning variances. The Board's efforts should be concentrated where they are most important: designating key projects and determining decisionmaking schedules.

Third, the Board is a single mission agency. It is set up to speed energy projects through the bureaucracy. No board with this narrow a mandate should be given the power to make decisions that are intended to protect the public health and environment from the damaging effects of energy development.

Fourth, the Board would replace not just Federal decisionmakers, but also State and local decisionmakers. This would be an unprecedented assault on our federalist system of government.

DESIGNATION OF PROJECTS

The Energy Committee bill provides very close guidelines on the types of energy projects which could receive fast-track designation. The substitute bill sets out specific criteria to insure the designated projects are the most important ones for reducing our oil imports, and the projects actually need the fast-track system to get moving. This will make sure that agency resources are concentrated on the projects that are most in need of the fast-track consideration.

DEADLINE FOR AGENCY ACTIONS

The Energy Committee bill provides that all Federal, State, and local agencies must decide on a critical project within 2 years after it is designated. While there is a need for short deadlines, the deadlines should not begin running until the agencies have before them the information they need to make their decisions. Otherwise, an applicant could actually delay giving the necessary information to an agency, knowing the agency would have to make a decision within 2 years.

To avoid this problem, the substitute bill requires that all agencies make their decisions within 1 year after the applications for the priority project are completed. In most instances, this will lead to quicker decisions than the committee bill, while insuring the agencies are not making their decisions in the dark.

Mr. President, there are many other differences between the Energy Committee bill and the substitute bill that will be discussed at greater length as we address special amendments later this week. For now, the most important decision before the Senate is which bill provides the best framework for expediting energy projects, without undercutting other important national values. The substitute bill proposed by Senator RIBICOFF is a much more balanced and reasonable bill, and I urge my colleagues to support it.

I thank the Senator from Connecticut for yielding time.

The PRESIDING OFFICER. Under the previous order, amendment No. 587 is accepted as a germane modification to the reported amendment.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

Mr. President, the Senator from Colorado made a very eloquent speech. The only problem is he was not talking about our amendment, our bill. Our bill makes it very clear that there is no substantive waiver save and except in one instance. That is under the grandfather clause. Under the grandfather clause, all it says in that respect is that a State or local subdivision or the Federal Government cannot come in and change the rules after the company has already gotten its permits, made substantial investment; it cannot change those rules unless it might unduly endanger public health or safety.

I thank the Senator from Connecticut for yielding time.

The PRESIDING OFFICER. Under the previous order, amendment No. 587 is accepted as a germane modification to the reported amendment.

So in the instance that the Senator from Colorado talked about—that is, the polyvinylchloride—that would very clearly fit into the public health or safety clause. And of course, a State or local or Federal rule could be changed and escape the effect of the grandfather clause in that instance.

Mr. President, we have made it very clear in this bill that there is no substantive waiver save and except in the grandfather clause and in the grandfather clause is expected anything that endangers public health or safety. Also, it excepts anything related to pensions, minimum wages, maximum hours, anything prohibiting discrimination because of race, creed, sex, or national origin, anything that might be a crime or an antitrust law, and equal opportunity obligations.

So, Mr. President, this bill does not do what the distinguished Senator from Colorado charged. Perhaps that is because he is not familiar with the amendment which has already been adopted to the bill.

Mr. HART. Will the Senator yield for a question?

Mr. JOHNSTON. On the Senator's time.

Mr. HART. I do not have any time. May I have 1 minute for a question?

Mr. RIBICOFF. Yes.

Mr. HART. I am familiar with section 36. Unless that has been changed, it seems to me it gives the Board the authority to waive.

It says: Authorized to waive the application of any Federal, State, or local statute, et cetera.

Then in subsection (a)(2), and these waivers take effect unless:

(2) the Board, after consultation with the agency responsible for implementing the statute, regulation, or requirement to be waived, finds that the waiver will not unduly endanger public health or safety.

The decision about what endangers unduly—which is an interesting word—is left with the Board.

There is no override on the part of the EPA, or anyone else, or any public agency. The Board makes that decision. That is the objection I have to this amendment.

Mr. RIBICOFF. I yield 2 minutes to the Senator.

Mr. JOHNSTON. I might say the answer is that that is subject to judicial review, that question of public health or safety. The Board must initially make the finding it does not endanger it and that, in turn, is subject to judicial review.

Mr. HART. Is the waiver operating while it is being reviewed? That can take years. In the meantime, people can be getting carcinogens in their lungs.

Mr. JOHNSTON. There is a possibility of injunction, but we vest it in TECA, under expedited procedures, which is one of the greatest utilities of this bill, the expedited procedure in TECA. So it is the fastest way to get the relief sought.

Mr. HART. One more question, what is the standard for judicial review, which in the law is arbitrariness and capriciousness?

Mr. JOHNSTON. It is the same as existing law.

Mr. HART. The Board has to be arbitrary or capricious——

Mr. JOHNSTON. That is not the standard in existing law, that is whether or not, in the case of evidence, there is a preponderance of evidence. In the case of law, whether or not it is legal.

There is no presumption with respect to law, but there is a preponderance test with respect to evidence.

Mr. MUSKIE. Will the Senator from Connecticut yield?

Mr. RIBICOFF. I yield 2 minutes to the Senator from Maine.

Mr. MUSKIE. Mr. President, I am very familiar with the Senator's amendment. I wholeheartedly agree with the analysis of it made by my good friend from Colorado (Mr. HART).

Mr. President, I would like to add some comments of my own.

Mr. President, I expressed my general concern yesterday about the Energy Mobilization Board legislation reported from the Energy Committee. I would like to make a few additional observations about that bill as well as the alternative legislation I have cosponsored and on which we will vote on later today.

I would like to reiterate that I still have considerable doubt that the Energy Mobilization Board is a necessary body. I still have doubt as to exactly what kinds of projects the Energy Committee has in mind for special treatment.

I still have doubt that the Energy Committee bill will be a major contributor to the goal of the President to reduce oil imports by 50 percent by 1990.

And most important, I still have grave doubt that the serious intrusions into Federal, State, and local safeguards are really necessary to achieve energy independence.

S. 1806 answers my concerns in a manner which S. 1308 could not. And frankly, Mr. President, if the kinds of authorities taken away from State and local governments and given to the Board by the Energy Committee are necessary to speed up the review process for energy facilities, then I do not think that fast track legislation should be enacted.

But I refuse to believe that the legitimate concerns and protections for our citizens must be overridden to achieve energy independence. If this is the case, then perhaps we should be examining the principles of federalism upon which our system is based. A bill creating an Energy Mobilization Board is not the appropriate vehicle for this examination.

I would now like to discuss the specific provisions of S. 1806 which address my concerns, concerns I believe are shared by many Members of the Senate.

DESIGNATION CRITERIA

S. 1806 requires the Board to make a finding that a project will contribute to a 50-percent reduction in the use of imported oil by 1990, the President's goal, and that it needs the fast track system to make that contribution to the goal.

Mr. President, this set of criteria embodies the rhetoric that others have used as only a justification for their meat axe approach. That rhetoric has never been translated into a statutory requirement except in the Ribicoff substitute. The designation of a project as a priority energy project will result in significant consequences no matter what bill is accepted today. It is only equitable that a facility should make this contribution to the Nation and its citizens in return for an alteration of existing procedural and substantive safeguards.

The committee bill does not require the Board to even consider the social, economic or environmental consequences of the exercise of its powers over a project. Nor could the Board be required to consider the views of other Federal agencies, State or local government, or the public. Nothing in S. 1308 would even compel the Board to choose the best among competing projects.

Since the number of projects would be unlimited, and indeed the Board could designate an entire "class of projects" as one project, the impact of designation upon an agency's capacity to deal with other nonpriority applicants might be significant. Yet S. 1308 does not require that the Board consider the consequences, necessity or practicality of priority treatment for a project.

The Ribicoff substitute on the other hand, requires the Board to consider all of the consequences of designation. It also provides for consultation with Federal agencies and State and local governments. It sets forth clearly specified criteria for designation and requires that the projects selected represent a diverse range of energy sources and technologies.

In addition, only 24 priority energy projects may be designated for fast track treatment at any one time under S. 1806. The numerical limit, not contained in the Energy Committee bill, has the obvious advantage of limiting the number of projects which can receive any sort of expedited treatment and thus prevent the clogging of a fast track system with unwarranted designations.

JUDICIAL REVIEW

We all know that the purpose of judicial review is accountability. The expansion of the concept of standing to sue to any person affected by an agency action is one of the most important developments in recent decades. To a large extent, in fact, the expanded availability of judicial review of agency action in environmental statutes may be the single most important factor in the fulfillment of congressional mandates.

Yet the Energy Committee has insulated the Mobilization Board from any sort of accountability for its designation decisions. Thus, even if the designation criteria were more satisfactory, they remain meaningless without judicial review because the Board is not bound by the applicable criteria in any practical sense.

The Energy Committee does however, provide judicial review to those who are denied designations. In other words, those who are singled out to share in the largess will not have their status jeopardized by an outside party challenging the designation; but a project which misses out on the competitive advantage of the fast track may indeed challenge the Board's judgment. This unequal treatment cannot be justified on any grounds relating to the goals of the legislation.

The Ribicoff bill does provide for judicial review of designation decisions. The review is of an appellate nature, that is, simply a review by the court of whether information on which the Board based its designation actually meets the criteria. It involves no additional trial type techniques which can be time consuming.

The mere existence of the availability of judicial review will deter designations which abuse the discretion given to the Board. This safeguard against unwarranted designations will also prevent the clogging of the fast track system with projects which do not deserve expedited treatment.

DEADLINES FOR AGENCY ACTION

If one accepts the concept of an Energy Mobilization Board, it is necessary to set deadlines by which required agency actions must be completed. S. 1806 would require the Board to set deadlines binding on agencies which must perform actions relating to the approval of a priority energy project. That deadline could be no longer than 1 year after the completion of a permit application, unless a longer period is clearly necessary. This approach provides the flexibility absent in the uniform deadline in S. 1308. It also provides an incentive to both the applicant and the agency to determine the contents of an application and to complete it as soon as possible.

The uniform 2-year deadline imposed on all agency action under the Energy Committee bill is arbitrary and unworkable. It has no reference to the particular requirements of any statute which may be longer or shorter than a uniform deadline imposed for every action. It may preclude any possibility of obtaining four-season baseline data for evaluating later environmental changes. It may result in inadequate substantive review of permit applications and, this inflexibility virtually guarantees that the Board will be given the opportunity to make the decision in lieu of an agency which misses its deadline.

ALTERATION OF LAWS

There seems to be an assumption on the part of many Members that because S. 1308 contains no across-the-board substantive waivers, it is therefore acceptable. This is not the case. S. 1308 specifically states that the Board is empowered to "alter" laws dealing with the National Environmental Policy Act, agency deadlines, agency procedures, judicial review, and substantive requirements of laws developed or implemented in the future. This power could be used to alter any Federal, State, or local law.

The Board is thus given legislative, executive and judicial functions over Federal, State, and local agencies alike. Do we really believe this is warranted to achieve energy independence?

The Ribicoff substitute preserves both the procedural and substantive requirements of law and the Federal-State relationship.

PREEMPTION OF STATE AND LOCAL DECISIONMAKING AUTHORITY

The Energy Committee bill authorizes the Board to enforce deadlines it has set for an agency by making the decision for that agency once a deadline is missed. This is an unprecedented and unwarranted intrusion into the prerogatives of State and local governments.

The provision has other flaws as well. The Board will be unfamiliar with the Federal, State or local law it must implement, thus adding unnecessary time to the decisionmaking process. The Board's sole mission is to expedite construction of energy facilities, a concern which will be at odds with the mission of the involved Federal, State or local agency. This is likely to lead to imbalanced decisions, and to more court challenges.

S. 1806 preserves the prerogatives of Federal, State, and local responsibilities while providing an alternative effective mechanism for enforcement of deadlines. The Board is authorized to obtain a court order either in Federal or State court to compel agency action. This will expedite the review process without preempting the significant protections enacted by Federal, State, and local governments for the good of their citizens. This approach has been endorsed by the National Conference of State Legislatures, the National Governors Conference, the National League of Cities, the U.S. Conference of Mayors, and the League of Women Voters.

PROCEDURAL WAIVERS

The Energy Committee bill authorizes the Board to adopt special procedures for Federal agencies governed by the deadlines set by the Board. This approach is objectionable because the Board may impose such special procedures on an agency without any regard for the particular statutory requirement

that the agency is implementing and the particular procedural needs associated with it.

I understand that the intention of the Energy Committee to expedite the procedural requirements of Federal, State, and local laws is central to this legislation. Some procedural requirements are of such fundamental importance, however, that they rise to the level of substantive law.

In some cases, the exercise of a substantive right hinges on a procedural requirement. In such cases eliminating the procedural right is tantamount to eliminating the substantive right itself.

The goal of this legislation, that is, to expedite decisionmaking, can be best accomplished by the establishment of realistic deadlines for agency action, coupled with a court order enforcement mechanism, the approach of the Ribicoff substitute.

GRANDFATHER PROVISION

Another provision of the Jackson bill which strikes at the heart of State and local governments' ability to protect the rights of their citizens is the grandfather provision. This authority would authorize the Board to waive any laws or regulation enacted or promulgated by a Federal, State or local body after commencement of construction of a priority project.

I think the best way to put it would be this: I would be interested in the reaction of the proponents of this grandfather clause and this whole Energy Mobilization Board, if administration of this act were placed in the Environmental Protection Agency.

Obviously, they would argue we were putting the fox in charge of the chicken coop.

However, they are trying to persuade us that putting their fox in charge of the environmental chicken coop is sound and that the Board will be as sensitive to environmental considerations as EPA or the State or local environmental agency.

Well, it works two ways, I say to my good friends. I just do not accept the argument that this Board—first, would be as knowledgeable about the intricacies and the background and the precedents of State and local laws dealing with the environment as those boards would be.

Second, it would not be as knowledgeable as EPA would be.

Mr. President, the grandfather provision would authorize the Board to waive any laws or regulation enacted or promulgated by Federal, State, and local bodies at the commencement of construction of a priority project. This approach would have the following serious results, and this is not procedural, this is substantive:

It removes the ability of all levels of government to deal with unknown or unanticipated toxic environmental effects of energy facilities that were not anticipated before the first shovelful of earth was turned;

It bars the possibility that technology to minimize these problems would be developed to insure the commercial viability of these processes;

Failure to develop controls will also guarantee continued resistance to the more widespread construction of energy facilities without adequate protection of the public health and safety of affected citizens.

Now, to argue that a provision that has those potential consequences is not substantive is the height of legislative cynicism, Mr. President.

Just yesterday an amendment was accepted to this provision which exempts from the waiver laws relating to labor management, pensions, safety, civil rights, crimes, and antitrust. Why do the alleged delays associated with those statutes have more significance than those which protect the public health and the environment or those relating to energy facility siting; ratemaking; rights-of-way for Federal, State or local lands; land acquisition and relocation; planning and zoning; allocation of energy supplies; regulation of transportation, including pipelines; tax determinations, including severance taxes; and historic preservation. It seems to me that our priorities are misguided in a very serious way if this amendment reflects them.

That is another list of laws that would be waived by this provision.

The amendment of yesterday did not touch those.

Now, why did they pick the ones they did to exempt from the waiver? To pick up votes, not because they had any doubts about the wisdom of the original provision.

So they conveniently overlooked these other significant and substantive provisions of State law.

S. 1806 contains no authority to waive substantive requirements, whether they be existing or future. No compelling reason for such a waiver has yet been provided by its proponents. I think that this waiver authority is simply another example of using the goal of energy as a shield for amending certain statutes a backdoor fashion. I have tried to get information on the need for the grandfather provision; yet none has been provided. I must assume then that the real motivation for the provision is not that it is necessary to expedite the operation of energy facilities but that environmental statutes are simply an inconvenience to some, who will try to avoid the requirement of law through any tactic.

NATIONAL ENVIRONMENTAL POLICY ACT

Congress enacted NEPA in 1969 to redress the mistakes being made by Federal officials who obstinately refused to consider the consequences of their actions for the human environment. Yet the Jackson bill would take us back to that very situation. The statute would be amended to give the Board the power to say who prepares the statement, and whether an impact statement was even necessary.

The Ribicoff substitute preserves the substance of NEPA while streamlining the process. It retains the current role of the Council on Environmental Quality and requires that deadlines be set for completion of each agencies role in the EIS. Again, there has been no indication that the existing process has not worked. Thus our bill seeks to simply speed up that process.

Mr. President, I think Senators ought to understand the limitations of the amendment yesterday, as well as the substantitve impact of the grandfather clause.

I thank my good friend from Connecticut for giving me an opportunity to make those points in the RECORD at this time.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Mr. President, how much time does the proponent of the substitute have and how much does the opponent have at this point?

The PRESIDING OFFICER. Would the Senator repeat his inquiry?

Mr. DOMENICI. How much time does the proponent of the substitute (Mr. RIBICOFF) have and how much does the opponent's side have?

The PRESIDING OFFICER. The Senator from Connecticut has 26 minutes and the Senator from Louisiana has 25 minutes.

Mr. DOMENICI. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order for Mr. JOHNSTON to make the motion to table now, notwithstanding the fact that the debate has not expired and will not expire until 12 o'clock.

Mr. MUSKIE. Reserving the right to object, may I ask the majority leader, the motion will be voted on at 12 o'clock?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. I so move, Mr. President, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered for 12 o'clock noon.

Mr. RIBICOFF. I yield 1 minute to the Senator from Maine.

Mr. MUSKIE. Mr. President, the Senator from Connecticut yielded me 1 minute.

I would like to read this language from page 39 of the committee report:

> The Committee intends to authorize agencies to make the changes enumerated in this section whether or not they can be categorized as procedural or substantive and whether or not they have substantitve as well as procedural implications.

Mr. President, that has been the burden of my argument for 2 days. I thought the Senate would be interested in finding support for that analysis in the committee report itself.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the Senator from Alaska.

Mr. STEVENS. Mr. President, I intend to support the motion to table the substitute because, as is pointed out in the committee report, I filed some minority views indicating my position that the committee bill does not go far enough.

I am rather surprised to hear that the substitute is supported on the basis of attempting to protect States rights. I

think that is a red herring. The only thing in the bill before us from the committee that is affected is the time of action under State law.

My substitute would provide for waiver of State substantive law, would provide for waiver of Federal substantive law, and would permit these priority projects to be placed on a fast, fast track.

The committee substitute sets forth a time frame concept and will provide some priority consideration. I do not think it will be sufficient, but certainly the concept of States' rights has not been affected by the committee bill.

The one States' rights area with which I am familiar, the question of the validity of rights created under State law for water, is fully protected by the committee bill. It seems to me that that is a property right. It is not a question of procedural law. It is not a question of State procedural law, such as a little NEPA law or a little water pollution law or a little clean air law, as I call them—copies of the Federal law.

Unfortunately, the substitute would exacerbate the situation further. It would be so bad that I think we could have litigation going on both in State courts and Federal courts at the same time, on the same projects, trying to determine what the situation should be with regard to the State law and with regard to the Federal procedural law. The committee bill is a step in the right direction.

I wish we would try to realize, if we are going to expedite these projects of national significance, that we should try to run and not just crawl toward the concept of expediting the projects. The substitute is a step backward. In terms of projects such as the Alaska oil pipeline, it would not have gotten that pipeline moving at all. As a matter of fact, it would further harass those who wanted to build the Alaska oil pipeline, in my opinion.

I hope the motion to table is supported by a majority of the Senate.

I would like to see some amendments offered to the committee bill to strengthen it, rather than a substitute which would completely destroy the concept we are trying to work out, and that is a procedure to expedite energy projects which are of national significance.

I thank the Senator for yielding me time.

Mr. RIBICOFF. Mr. President, I yield 2 minutes to the Senator from Colorado (Mr. ARMSTRONG).

Mr. ARMSTRONG. I thank the Senator for yielding.

Mr. President, I join others in congratulating the Senator from Louisiana and the Senator from New Mexico for bringing this bill to the Senate, because it addresses what is really the central aspect of the energy problem in this country today, and that is the bureaucratic redtape that makes it almost impossible to produce energy, no matter what the market forces or the capital forces are. The thing tying us in knots is the bureaucratic redtape.

At the same time, I congratulate the Senator from Connecticut and the Senator from Maine for the concerns they have raised, and they are concerns which I share.

I am eager to cut the redtape, but I want to do it in a way that is fully protective of States rights, particularly State concerns about water and environmental and similar considerations.

As I understand the parliamentary situation, if the tabling motion is adopted, we then have the committee version of the bill before us, and presumably Senator RIBICOFF, Senator MUSKIE, and others will offer a series of amendments to the committee bill. If the tabling motion fails, then presumably we can go ahead and offer perfecting amendments to the Ribicoff-Muskie substitute.

We have a complex parliamentary situation, and it seems to me that the best and most orderly way to resolve that is not to table the pending substitute and to permit those of us who have additional perfecting amendments to offer to do so.

Therefore, I will vote against tabling, but I make it clear that that is not necessarily, in my mind, a final judgment on the merits of the proposed substitute. Either way, whether the substitute is or is not tabled, I think both versions of the bill require further amendment, and I will have two and possibly three suggestions of my own. I know that others will, also.

I wanted to get that explanation on the record, because the parliamentary situation is complex and potentially subject to confusion. My interest is to find a way to cut the redtape, as the Senator from Louisiana, the Senator from New Mexico, and others on the committee are trying to do, and to preserve and protect States rights and environmental considerations which have been spoken of eloquently by a number of Senators.

I am going to withhold offering my amendments for the time being. I shall vote against tabling and offer my perfecting amendments sometime this afternoon.

Mr. RIBICOFF. Mr. President, I yield 2 minutes to the Senator from Wyoming.

UP AMENDMENT NO. 588

(Purpose: To set forth a national program for the full development of energy supply, and for other purposes)

Mr. WALLOP. Mr. President, I offer an amendment to the substitute.

The PRESIDING OFFICER (Mr. DECONCINI). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP), proposes an unprinted amendment numbered 588 to amendment 488.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, between lines 5 and 6, insert the following:

SEC. 21. (a) Nothing in this Act shall be construed as expanding or conferring upon the United States, its agents, permittees, or licensees any right to acquire rights to the use of water.

(b) The United States, its agents, permittees, or licensees shall appropriate water within any State for an energy project pursuant to procedural and substantive provisions of State law, regulation, or rule of law governing appropriation, use, or diversion of water.

(c) The establishment or exercise pursuant to State law, of terms or conditions including terms or conditions terminating use, on permits or authorizations for the appropriation, use, or diversion of water for energy projects shall not be deemed because of any interstate carriage, use, or disposal of such water to constitute a burden on interstate commerce.

(d) Nothing in this Act shall alter in any way any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, or diversion of water.

Renumber remaining sections accordingly.

On page 27, line 10, insert the following after "action.": "Where possible, the Energy Mobilization Board shall negotiate and enter into written cooperative agreements with each affected state and local government establishing the deadlines."

Mr. WALLOP. Mr. President, I ask unanimous consent that the names of Senator HATCH, Senator HAYAKAWA, Senator SIMPSON, and Senator GARN be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, the amendment I offer would insure that the integrity of State water allocation systems would not be breached by this act. In so doing, I believe we remove a cloud that now exists, and in fact improve the climate for necessary energy development.

My amendment would do four things:

Insure that nothing in this act is construed as granting the United States or its agents a new right to use water;

Insure that appropriations of water for a priority energy project or any energy project be made pursuant to State law;

Insure that if a State exercises conditions on water permits, that exercise will not be prohibited as being a burden on interstate commerce; and

Insure that nothing in this act shall alter after any provision of State water law.

I believe it is a necessary amendment. Our renewed interest in domestic energy production has rekindled fears in my State of Wyoming, and throughout the West, that our already tightly stretched water supplies will not be capable of supporting the additional development without injury to present water users. In the normal course of events, new development, be it agricultural, industrial, or municipal would not be feared. The system of water law which has developed in the West, fashioned around what is known as the appropriation doctrine, protects those who use water by recognizing the proprietary right of those who first divert water and put it to a beneficial use.

The system is comprehensive, and regardless of the amount of water that is available in any given year, all water users are certain of their rights to water in relationship to all other water users on a stream.

This system of water allocation by prior appropriation is not a roadblock to a new user, who may either acquire rights to unappropriated water should it be available, or purchase and transfer rights from existing water users. But all users will be protected, for they will either have their water, or be compensated for loss of it.

But the massive Federal push to develop domestic energy resources, of which this bill is a major part, along with recent Federal claims which run contrary to the long recognized authority of the States to allocate water supplies, is taking its toll. Opposition is mounting to many proposed energy developments not only for environmental and socio-economic reasons but because water users fear that water for that development will be acquired or exercised without regard to their prior rights.

I believe it is important that any legislation clarify that regardless of who develops energy in this country, through priority energy projects or garden variety energy projects, the water necessary for that development will be acquired and used in conformity with existing State water allocation systems. Such clarification is proper for three reasons. It acknowledges that only through State systems will all rights be recognized and protected, and meshes with careful congressional deference which has consistently been afforded State systems. Second, it will speed necessary energy development by removing the specter of shadow Federal rights and thus allaying many of the fears that now exist. And finally, it will serve to clarify Federal intent regarding water for energy development, and remove the need to address the issue in each piece of energy legislation which Congress enacts.

Let there be no mistake. My amendment would not limit rights the Federal Government might otherwise have to protect national parks and monuments, national forests, or other reserved Federal lands. This amendment would clarify Federal responsibilities regarding energy projects only.

● Mr. ROTH. Mr. President, as the principal Republican sponsor of the substitute amendment, I am pleased to accept the amendment offered by the Senator from Wyoming, my good friend. This amendment preserves and strengthens fundamental State and local rights against the Federal Government. The amendment strengthens the most fundamental State rights of all in our Western States: water rights. I think my colleagues should know that with this amendment added, our substitute amendment provides much stronger protection to State water rights than the Energy Committee bill.

As the ranking member of the Intergovernmental Relations Subcommittee which oversees Federal-State relations, I believe this amendment strengthens and sustains our federal system, preserves State and local rights. It deserves the full and wholehearted support of the Senate.●

Mr. WALLOP. Mr. President, it is my understanding that the sponsors of the substitute find this amendment acceptable.

Mr. RIBICOFF. Mr. President, under the unanimous-consent agreement, the amendment of the Senator from Wyoming is acceptable.

The PRESIDING OFFICER. Under the previous order, amendment No. 588 is accepted as a germane modification to amendment No. 488.

Mr. JOHNSTON. Mr. President, we also accept that amendment as an amendment to the committee bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I thank both Senators for their courtesy and for their understanding of the problems involved.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the Senator from Oklahoma (Mr. BOREN).

Mr. BOREN. Mr. President, I support S. 1308, the Energy Mobilization Board, recommended to Congress by the President. In so doing, Mr. President, I am strongly reminded of a comment made by one of my constituents recently during one of the frequent town meetings I hold in Oklahoma.

I had been reporting on various matters before Congress and the difficulties I saw in getting some needed measures enacted. At the conclusion of my remarks, an elderly gentleman arose from the audience and said, "It seems to me that we are working just as hard as we can to defeat ourselves."

Mr. President, those words put very completely and concisely both the reason for the creation of any Energy Mobilization Board. A major reason why we do not have adequate energy facilities to meet the needs of our Nation and end our dependence on foreign sources is a classic case of buck-passing and decision postponement.

The President had demonstrated bold leadership in his concept of this Board.

We must act now to increase our domestic production, refinement and transportation of energy.

Even if the drilling of oil increases dramatically, as a result of decontrol, if it takes 12 years for a company to get permits to build a refinery, and over 4 years to build needed pipeline so that we can use the oil we produce, then such an important step is for nothing.

Mr. President, the American people have felt the pinch of short supplies due to unrest overseas, and they are demanding that the Congress get its house in order here at home to produce the energy we need. The people have a great sense of urgency.

The President has recognized this and has devised a strategy to cut through the bureaucracy and provide our citizens with the energy they demand.

Just as we in Congress are quick to criticize the President when we believe he is wrong, so we should be quick to praise him when he is right, and in this case, he is absolutely right.

If the Congress fails to pass a bill with teeth, such as S. 1308, our energy problems will continue, disruptions will be back. We will not be able to point the finger of blame at the President, the people will be justified in pointing the finger of blame directly at the Congress itself.

The bill passed out of the Energy Committee is far from perfect. I would have liked to have seen more private sector involvement as was the case during WW II on the War Production Board. But I do believe that the Energy Committee bill is strong enough to do the job we so desperately need.

I believe that S. 1308 is a far stronger bill than the substitute measure now under discussion and here are just six areas of significant differences.

First, the committee bill sets firm decision deadlines for Federal, State, and local action on priority energy projects and the substitute does not.

Second, the substitute contains no procedures to enforce established deadlines except by going to court. Mr. President, a great deal of our problem is that we spend far too much time in court now.

Third, the grandfather clause contained in the committee bill with respect to the waiver of substantive laws is vitally needed. No such provision is contained in the substitute. Projects should not be delayed because the law is changed after they are commenced.

Fourth, the committee bill contains a much needed provision for the consolidation of lawsuits. I view this as an extremely important timesaving measure.

Fifth, I do not agree with the concept contained in the substitute that there be a limit on the number of energy priority projects that would be established and pursued by the Energy Mobilization Board. The Energy Committee bill rightly contains no such restriction.

And finally, Mr. President, under the substitute proposal now being considered, every designation for a fast track project could be challenged in court.

Mr. President, I firmly believe that no bill at all is better than a bill with no teeth in it. We must have the courage to strike the needed balance between energy production needs and environmental concerns.

I certainly have strong concern for the environment and my record as Governor and here in the Senate will reflect that. But in this matter, balance is needed, and more than that, enforceable balance is needed. The committee bill will provide that balance. Every one should have his or her "day in court" but then a decision must be reached in a timely fashion.

One final point, Mr. President. The concept of an Energy Mobilization Board is based on the need to cut through the bureaucracy and reduce redtape, I find no consistency in achieving that end through the creation of more bureaucracy and more redtape. That is precisely what this substitute measure would do.

I urge my colleagues to support the motion to table that will be made later today and support the President and the Energy Committee in their efforts.

So, I urge the adoption of the committee version of the bill and the rejection of the substitute.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 1 minute to the Senator from Wyoming.

Mr. WALLOP. Mr. President, I thank the Senator from Louisiana.

Mr. President, with the adoption of my water amendment on the committee bill, S. 1308, as well as the substitute, many of the reservations which I expressed in my additional views have been laid to rest.

I say that the mere fact that the Senate and Congress is looking at this subject at all, the need for an Energy Mobilization Board, is a recognition that we have a structural defect in the law in our ability to try to move the country forward in the production of its energy resources at a time when we need them most. Anything we can do to ease and deal with that structural defect is valid.

I say one of the best things that is in S. 1308 is the required report back to Congress at the end of the period of time of what they have identified as being the most serious problems that they have come across.

I also point out that one of the things I like is that there are no set limits, although I express some reservations on the committee in my additional views. It seems to me that in a competitive world where the free enterprise system is at work you cannot take two similar projects and fast track one and refuse to fast track the other, and thereby make a decision that is worth a couple of years and a couple hundred million dollars in the competitive field.

So there is also a recognition of that in S. 1308 that there is an appeal from the decision of the Energy Mobilization Board not to designate.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. WALLOP. Mr. President, I thank the Senator from Louisiana and just tell him my support is on his side.

Mr. RIBICOFF. Mr. President, on behalf of Senator DOMENICI I yield to my distinguished colleague from Connecticut (Mr. WEICKER).

Mr. WEICKER. Mr. President, I am pleased to join my distinguished colleague from Connecticut and the distinguished Senator from Maine in cosponsoring the substitute which is being offered to S. 1308.

There are many reasons why I am opposed to the Energy Committee bill. However, at this time I will confine my remarks to two sections of S. 1308 which are of dubious constitutional validity. Specifically, I am referring to the provisions that would authorize the Energy Mobilization Board to act in lieu of a State or local agency, and that which would vest in the Federal Temporary Emergency Court of Appeals exclusive jurisdiction to review an action by a State or local agency or a decision rendered by a State or local trial court. Unfortunately, although these sections have been referred to in passing during the course of debate on this bill, proper attention has not been given to these issues.

Subsection 21(a) of S. 1308 would authorize the Energy Mobilization Board to make a decision or take an action in lieu of any agency—whether it be Federal, State or local—if the agency fails to meet a project decision schedule deadline established by the Board. Congress is thus seeking to regulate the activity of States acting in their sovereign capacities. In the memorandum prepared by the Justice Department on the constitutionality of the administration's proposal for an Energy Mobilization Board—which was cited yesterday by the distinguished Senator from Louisiana, the floor manager of the bill now before us—it was admitted by the Justice Department that the provision for displacement of State and local agency decisionmaking:

> Obviously . . . intrudes on authority presently exercised by state and local officials. Indeed, it could be argued that supplanting decisionmaking strikes at the heart of state and local sovereignty. Nothing is a more integral governmental function than government itself.

Despite this stark admission, the Justice Department attempts to justify this provision on the broad power to act given Congress under the commerce clause, article I, section 8, clause 3 of the Constitution. Additional support is sought in a series of cases that considered constitutional challenges of the Clean Air Act.

However, in discussing the displacement of State and local decisionmaking, the Justice Department does not even discuss the seminal U.S. Supreme Court Decision establishing limitations on the congressional power to act under the commerce clause to interfere with the role of the States in the Federal system.

In its 1976 decision in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Supreme Court invalidated extension of the Fair Labor Standards Act's minimum wage and maximum hour standards to State and local governments. The Court stated that:

> We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner. *Id.* at 845.

In its decision, the Court established a test by which the constitutionality of every attempted commerce clause regulation of State and local governmental activity must be judged. The test has two tiers to determine intrusions on State sovereignty.

First, it must be determined whether the governmental activity being regulated is "essential to the States' separate and independent existence." To identify those governmental functions deserving an affirmative constitutional protection, the Supreme Court used several phrases: "integral"; "traditional"; "essential"; and "functions * * * which (State) governments are created to provide."

Is there any doubt that the State and local activities which the Energy Mobilization Board would be empowered to displace under subsection 21(a) of this bill are those functions which are traditionally relegated to the States? Under the Energy Committee bill, the Energy Mobilization Board is empowered to act in lieu of the States or local agency in such traditional State governmental functions as zoning decisions, land-use controls and safety regulations as they are applied to energy facilities. If the Federal Government is empowered to preempt local zoning decisions, our State and local governments would be reduced to mere appendages of the Federal Government. Clearly, this result would transgress the constitutional scheme.

Having ascertained that the State and local agency activities are "essential to the States' separate and independent existence," the test established in National League of Cities requires an examination of the degree of interference imposed by the Federal regulation. If the regulation either imposes significant financial burdens on the governmental body subject to the regulation or displaces the States' freedom to carry out essential activities, then the Federal Government has unconstitutionally interferred with State sovereignty.

The displacement powers granted the Energy Mobilization Board under S. 1308 empowers it to impose conditions on the State without either relieving the State completely of regulatory responsibility or providing it with feasible alternatives to operating under the Federal dictates.

While a State is aware of the deadlines and waivers present in its decision schedule before it embarks on its regulatory process, it is not, as a practical matter, given the option of not initiating the process so as to avoid the deadlines.

It must start the process, hoping to comply with the schedule; if not, the process is prematurely ended and Federal decisionmakers take over. Because a State cannot be expected to abandon such traditional and essential functions as zoning, land-use control, and health and safety regulation, it must enlist its regulatory resources each time with the possibility of premature termination of the process, together with its attendant waste of State money and personnel time.

The two prongs of the National League of Cities test are satisfied by the provision in S. 1308 empowering the Energy Mobilization Board to act in lieu of State and local agencies. Thus, the provision is an unconstitutional intrusion by the Federal Government into an area sovereign to the States.

I might add that the Justice Department's reliance on the courts of appeals decisions in the so-called clean air cases, is misplaced. Simply put, the Courts of Appeals of the Fourth, Ninth, and District of Columbia circuits in these cases rejected an interpretation of the Clean Air Act which would force States to enforce implementation plans by enacting statutes or regulations, or face the possibility of compliance decrees or civil or criminal penalties. As the court stated in *EPA* v. *Brown*, 521 F.2d 827, 839 (9th Cir. 1975), to adopt such an interpretation of EPA's enforcement powers "would authorize Congress to direct the States to regulate any economic activity that affects interstate commerce in any manner Congress sees fit. A commerce power so expanded would reduce the States to puppets of a ventriloquist Congress." It may similarly be argued that to enable

the Energy Mobilization Board to step in for State or local agencies would make the States Muppets. Therefore, the Board should not be given the authority to displace State and local agency decisionmaking.

I also have reservations about the constitutionality of vesting the Temporary Emergency Court of Appeals with jurisdiction to review "any action by any State or local agency or officer if such action is subject to a deadline" and to review any action by "any State or local trial court with respect to a case involving an action pursuant to the act."

Article III, section 2 of the constitution of the United States provides that Federal courts may be given jurisdiction "over all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

In determining whether a case "arises under" the Constitution or laws of the United States, one must start with Chief Justice Marshall's opinion in *Osborn* v. *Bank of the United States*, 22 U.S. 738 (1824). Marshall reasoned that the "arising under" provision would be satisfied because the validity of a federally-chartered bank's capacity to sue or contract would always be an "original ingredient" of every suit.

However, cases coming to the Temporary Emergency Court of Appeals from State agencies pursuant to S. 1308 would lack even an "ingredient" of a Federal question. The plaintiffs in such suits would be State citizens or corporations, the defendants State officers and agencies, and the governing law would be found in State statutes. The absence of any federally created cause of action or parties operating under Federal control or auspices would take appeals from State agency action outside even the most expansive reading of article III.

The Department of Justice, in defense of the administration's proposal, has offered two theories to embrace these cases within Federal jurisdiction. These defenses have likewise been offered for S. 1308. One argument is that Federal law could incorporate State law and in effect adopt it as Federal law. The notion of "protective jurisdiction" has also been proffered as a justification. Neither of these theories withstand close scrutiny.

S. 1308 does not purport to incorporate State law as Federal law. Nor has "Congress expressly incorporated State law as the Federal law of decision by the EMB and State and local agencies * * *," as the Justice Department memo has suggested is necessary.

Additionally, four of the five cases cited by the Justice Department in support of the incorporation theory are in fact cases involving State law being applied in national parks, which are Federal enclaves. Thus, these cases—unlike S. 1308—involve areas of exclusive Federal sovereignty and law enforcement gaps would exist if State law was not held to be incorporated. Finally, in the Quadrini case cited by Justice, the court expressly limited its discussion of Federal court application of State law to the Federal enclave situation. The Court expressed doubts about its applicability in the commerce clause context—which is the context in which the incorporation theory under S. 1308 would have to be considered.

Nor can Federal jurisdiction be predicated on the "protective jurisdiction" theory. The Supreme Court has not affirmed either variant of this theory. In fact, as Justice Frankfurter said in his dissent in Textile Workers Union of America against Lincoln Mills:

> Protective jurisdiction, once the label is discarded, cannot be justified under any review of the allowable scope to be given to Article III.

Many have adopted the Frankfurter view. As Professor Wright observes in his treatise on Federal Practice and Procedure:

> It is difficult to believe that the Supreme Court, if clearly confronted with the question, would accept . . . proposals for "protective jurisdiction" when to do so would have such drastic consequences on the accepted understanding of Article III as a limitation on the federal courts.

There clearly exists substantial questions concerning the constitutionality of vesting the Temporary Emergency Court of Appeals with exclusive jurisdiction to review actions of state and local agencies and decisions rendered by State and local trial courts. Accordingly, review of these decisions should be left to the review procedure adopted by the appropriate State.

The PRESIDING OFFICER. The Senator's 6 minutes have expired.

Mr. WEICKER. I make the final point that voting for the Muskie-Ribicoff amendment vitiates the objections which I have stated or have in my statement here today. Failing their amendment, I will offer them as amendments to the bill.

Mr. JOHNSTON. Mr. President, I yield 1 minute to the distinguished Senator from Oklahoma (Mr. BELLMON).

Mr. BELLMON. Mr. President, I thank my friend from Louisiana.

S. 1308 appears to be that rare legislative product which has reached the middle ground which successful legislation usually seeks but rarely finds. The middle ground is that we have found this position which will make is possible for the Nation to move ahead in solving the energy crisis without unduly stepping on the rights and prerogatives of State and local governments.

The fact is that we must have, as a very minimum, a procedure to get decisions in the energy area made in a prompt, timely manner or we are never going to be able to solve our problem; and the fact also is that the substitute does not provide these procedures and, therefore, is not a valid solution to the difficulties that major energy developments face in trying to get the permits and overcome the redtape that presently impede these major projects.

There are some in the Senate who feel S. 1308 goes too far and that it may impair processes designed to assure careful consideration of environmental concerns. On the other hand, there are those who consider the legislation to be lacking in that it does not provide authority to directly override State and local authorities. As a member of the Energy Committee and one who spent many hours in the consideration of this legislation, I must say that, while I personally favored a stronger bill, I feel S. 1308 holds the potential for moving the United States sharply forward toward the direction of solving the Nation's energy problem.

Mr. President, my interest in this legislation is not new. On December 6 and 7, 1973, the CONGRESSIONAL RECORD, beginning on page 40081 and intermittently through page 40232, records debate on an amendment which I offered to S. 1283, a bill intended to establish a national energy research and development policy. My amendment was intended to remove what I considered to be impediments which would prevent S. 1283 from accomplishing its role.

During the debate, I stated:

> The effect of my amendment is to put the program into action almost immediately so that we would have results in time to help in the resolution of the immediate energy crisis as well as to help solve it on a permanent, lasting basis. (Page 40086.)

Also during that debate, the distinguished Senator from Louisiana, BENNETT JOHNSTON, stated on page 40088:

> As the President has said, being energy self-sufficient in 1980 is a top priority for the United States. So, in the sense that this amendment is intended to make us energy self-sufficient, we are in accord with that feeling.

In retrospect energy self sufficiency in 1980 seems like an impossible dream. We are far worse off now than we were in 1973.

Mr. President, the fact that we have come far short of energy self-sufficiency in 1980 is one more reason why I strongly support the measure before us today.

The fact is that either intentionally or inadvertently, Congress has wasted the 6 years since 1973. The legislation which the Senate has passed, while well intended, has been so encumbered by restraints of one kind or another that the effective development of alternative fuels has been paralyzed.

There is no question that this Nation has the energy resource base needed to meet our energy requirements indefinitely. The problems in getting commercial oil shale, coal liquefaction or coal gasification plants into production are actually two. The first is the problem of economics. No investor is willing to build an energy plant which may cost hundreds of millions or perhaps billions and produce a product which is sold at a price too low to show a reasonable return on investment.

Of equal importance, experience such as the Sohio/California pipeline incident have made investors fully aware that the impediments which Congress and other governments has placed in the road of major energy developments are so onerous that needed projects may never get off the ground because they become entangled in either State, local, or Federal redtape.

S. 1308 comes as close as it is legislatively possible to walking the narrow line between creating a governmental monster which has the power to trample upon the prerogatives of the States or the lives of our citizens and the timidity which has made past legislative endeavors in this area unproductive.

Without the legislative authority provided in S. 1308, as well as the financial support anticipated in the passage of the Energy Security Corporation legislation which will follow, this Nation is likely to wait another 6 or perhaps 60 years before the multibillion-dollar investment needed to bring our abundant energy resources to the marketplace are made. Admittedly, there are risks in this legislation but they are risks which can be quickly remedied if Congress feels that the authority granted by S. 1308 is being abused.

Many studies have shown that numerous energy development projects are being held in abeyance until the legislative authorities contained in S. 1308 are in place. Unless approval and licensing of these demonstration-type projects is accelerated, there is simply no way to get to the commercial scale plants which will be required if this Nation's dependence on costly, unreliable crude oil imports is to be diminished. A recent editorial in the October 1, 1979, issue of the New York Times states an argument on this topic which I find compelling.

I ask unanimous consent to have the New York Times editorial printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE ENERGY RISK WORTH TAKING

The bitter debate over the creation of an energy mobilization board is coming to a head in both houses of Congress. The House must soon decide between very different approaches sponsored by Representatives Dingell and Udall. But first will come a pivotal decision this week in the Senate, where a plan close to the one proposed by the Carter Administration is backed by Senator Jackson. Opponents of that bill raise some troubling objections. But given the need to assure speedy development of alternative energy resources, the Carter-Jackson approach deserves support.

Under the Administration's plan, the primary function of the energy mobilization board would be to trim red tape. It could set deadlines for Federal, state and local review of project permits. If these various authorities did not meet the deadlines, the board would be permitted to make decisions for them, within the constraints of existing law.

Once construction had begun on a project, the board could exert somewhat broader powers. It could block any imposition of added restrictions—new air quality standards, for example — unless health or safety were threatened. All challenges of projects requiring adjudication—whether Federal, state or local—would be heard by a single Federal appellate court.

Some environmentalists dislike the plan because they oppose enabling a Federal board to do what this one would—that is, prevent delay for the sake of delay. More thoughtful environmental opponents recognize the need to get moving on energy, but are worried that the board's discretion would be insufficiently constrained by law. A Carter-style board could not directly alter environmental laws, save in the special case of regulations imposed after the fact. By forcing rapid decisions, though, it might prevent careful review of environmental hazards.

That risk is real; bureaucracies do have a way of focusing on narrowly defined goals—like the completion of energy projects—and, in the process, of giving short shrift to competing concerns. In this case, however, the risks are acceptable, precisely because the alternatives are not.

The United States faces unprecedented dangers in continued dependence on foreign oil. Only with luck will the nation make it through the 1980's without catastrophic oil shortages or shameful foreign policy concessions to OPEC. An energy mobilization board alone can hardly be expected to solve the problem of dependence. But it would help, at a time when America will need all the help it can get.

Mr. BELLMON. Therefore, the legislation before us is key to future energy development in this country. In my opinion, this bill is the centerpiece for the effective development of our unconventional energy resources such as oil from shale and gas or liquids from coal. Without this legislation, Mr. President, we remain at square one in our continuing energy dilemma; for without the expedited procedures contained in this bill, all the money we authorize, or all various incentives we may make available for the development of synthetic fuels in this country will go for naught. The time has come to untangle the bureaucratic web which has stiffled major energy development in this country. S. 1308 provides the means for moving ahead toward a solution of the Nation's energy problem.

Others have explained the details of S. 1308 and I will not add greatly to this burden of explanation. This bill simply provides the mechanism and authority for expediting the decisionmaking process associated with priority energy projects. It preserves the integrity of substantive laws which may affect such projects at every level of Government. This legislation only addresses procedural delays, not substantive problems, and in doing so, a balance has been struck between those who are frustrated by unnecessary delays within the governmental process and those who fear a wholesale destruction of our environment.

Mr. President, as a Member of this body for almost 11 years, I feel I am safe in saying that the Senate has yet to pass a perfect piece of legislation. I certainly do not represent that S. 1308 qualifies for that description. However, I would like to say to all my colleagues that none of us can have everything we want in this bill. I believe it represents a responsible and workable approach to the problem of removing the bureaucratic barriers which have held back energy development in this country and, at the same time, it avoids trampling unnecessarily on the rights of our citizens and on the prerogatives of State and local governments. I doubt we can do better and, for that reason, I support S. 1308 and urge others to do the same.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, a parliamentary inquiry. May we know the times remaining for the distinguished Senator from Louisiana and myself?

The PRESIDING OFFICER. The Senator from Louisiana has 14 minutes, 54 seconds; the Senator from Connecticut has 12 minutes, 23 seconds.

Mr. RIBICOFF. I yield 2 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, the Senator from Kansas has taken a careful look at both S. 1308 and S. 1806. I am fully aware of the need to expedite domestic energy projects in order to reduce this country's dependence of foreign oil—oil sold at prices artificially high; prices which are devastating our economy.

Mr. President, as I see the situation, we have before us today two alternatives which seek to deal with this problem. First, we can create an energy mobilization board with far-reaching power to waive State and local procedural and substantive law, such as S. 1308 comtemplates.

The Senator from Kansas is aware of the arguments that the proponents of S. 1308 put forth. They deny that the Energy Mobilization Board would have these drastic powers to override State and local statutes and regulations. Nevertheless, I am concerned about the constitutionality of such a proposal.

In the recent case of National League of Cities against Usery, the Supreme Court struck down the application of Federal wage and hour provisions to State and local government employees, on the grounds that such application unconstitutionally impaired the States' "Freedom to structure integral operations in areas of traditional Government functions."

Mr. President, the Senator from Kansas fears that this and similar other cases could and would be used as precedents for States to bring many actions in court challenging the constitutionality of the far-reaching energy mobilization board as envisioned in S. 1308. This bill gives the Board too much far reaching power to waive State laws and to force States to comply with its decision schedules. In addition, judicial review would be available only in the temporary emergency court of appeals, the constitutionality of which may also be challenged by States. If the States proceeded to litigate the Board's and Court's constitutionality, the entire Energy Mobilization Board might very well be tied up in court for months or even years. This would certainly not aid in the swift approval of energy project construction permits.

The second alternative we have is the so-called Ribicoff/Muskie amendment, No. 488, which would set up an Energy Mobilization Board with less drastic powers. I support the concept of placing the Energy Mobilization Board in more of a consulting role, rather than a role of supreme decisionmaker.

The only way that such a board can legitimately function and subsequently aid in alleviating our energy problems is for Federal, State, and local governments to work hand in hand with one another. Too many times we have seen a new Federal agency created to eliminate a given problem only end up, in the final analysis, as a further impedi-

ment to the solution. The energy crisis we face today is much too threatening to our economy and to our total way of life to permit this to occur. Therefore, our job must be to provide a mechanism that will enhance a feeling of cooperation, rather than the ultimate subjugation of State and local prerogatives.

While I am inclined to view the Ribicoff proposal as the lesser of two evils, I am concerned that it may become too weak to have any significant impact on smoothing the path for energy projects. It seems to me that it would just create another costly Federal bureaucracy without any effective power.

My concerns about the Ribicoff amendment can be addressed by the adoption of three amendments which I plan to offer.

The Senator from Kansas would like to state for the record his intention to offer these amendments, without which I cannot support the Ribicoff substitute.

First, the Senator from Kansas believes it to be specious, at best, to permit passage of State or local legislation which would inhibit the completion of a priority energy project after it has been designated as such. Accordingly, I plan to propose an amendment to the pending substitute which would provide for a "grandfather" clause, enabling the Energy Mobilization Board to waive the application of any Federal, State, or local statute, regulation or requirement enacted after the designation of a priority energy project for a period not to exceed 5 years. This "grandfather" provision would tighten up the Ribicoff amendment without running into serious constitutional problems.

The waiver power granted to the Energy Mobilization Board in my "grandfather" provision would permit a waiver to be granted only after the Energy Mobilization Board consults with and secures the consent of those Federal, State, and local agencies involved. By adopting language such as I propose we can assure that the Energy Mobilization Board will not be enpowered to overrule statutes or regulations promulgated by a State or local government without their approval.

Mr. President the proposal of the Senator from Kansas is a realistic compromise to this delicate issue. It is a compromise that both sides of this question can support. It would simply allow the Energy Mobilization Board to grant a waiver of any new statute for a maximum of 5 years. It is not an open-ended waiver with no time limitation. This 5-year waiver would certainly be enough time to allow for either compliance with the new statute or regulation or the final completion of the project itself.

Second, the Senator from Kansas would like to provide for a sunset provision to be included in the legislation to terminate the Energy Mobilization Board in 5 years, and require the Government Accounting Office to issue a report of the Board's accomplishments and recommendations for future action. We must be careful not to create a monster of an agency which would continue beyond its useful life. Bureaucracies have an innate tendency to perpetuate themselves.

The report requirement would be a way of assuring that the life of the Board would not be extended beyond its usefulness. The GAO report would provide the Congress with an independent and comprehensive assessment of the Board's performance.

The Senator from Kansas envisions that the report would include the following: First, has the Board accomplished its goals; if not, why not? Second, how many years and dollars has the Board saved us? Third, by how much has our imported oil been reduced? Fourth, should the Board's authority be terminated or extended?

Finally, the Senator from Kansas would like to propose that the composition of the Energy Mobilization Board be bipartisan. This would insure that political or philosophical differences would not dictate national energy policy. There is a clear need for balance in the philosophical and political outlook of the Board's members. This amendment would insure that the Board would not be used as a political tool of the party which controls the White House.

We must not play politics with the energy needs of the country. Without this amendment, the Senator from Kansas fears that the Board could be used to designate priority energy projects on the basis of political patronage rather than actual need and merit. Furthermore, the Board is far more likely to insure a willing compliance with its decisions by States and localities if it is bipartisan, because its motives will be looked upon as sincere, and as being in the national interest.

For these reasons, Mr. President, I would like to offer an amendment requiring that not more than two of the Board members may belong to the same political party.

Mr. President, the Senator from Kansas would like to state for the record his sincere concern with the deficiencies of both S. 1308 and S. 1806. Without the three amendments which I have offered, this Senator does not see how he can support either bill.

UP AMENDMENT NO. 589

Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 589.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 41, insert the following between lines 4 and 5:

SEC. 28(b). Not later than March 30, 1985, the Government Accounting Office shall prepare and transmit a report to the Congress concerning the activities of the Energy Mobilization Board since the date of enactment of this Act. Such report shall contain a detailed analysis of the number of years and dollars saved and of the amounts by which imported oil use was reduced by the Federal Government and the private sector due to the activities of the Board in carrying out this Act, and estimates concerning such savings and usage if the authority of the Board were extended until September 30, 1990.

Mr. DOLE. I may say I discussed this amendment with the distinguished Senator from Delaware and the distinguished Senator from Connecticut. What it does is to terminate the Energy Mobilization Board in 5 years, and require the Government Accounting Office to issue a report of the Board's accomplishments and recommendations for future action. That is the substance of the amendment I am offering to the Senate, and I think it is acceptable.

Mr. RIBICOFF. Mr. President, the amendment is acceptable.

The PRESIDING OFFICER. Under the previous order amendment No. 589 is accepted as a germane modification to amendment 488. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment was agreed to.

UP AMENDMENT NO. 590

(Purpose: To provide that not more than two members of the Board may be members of the same political party)

Mr. DOLE. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 590.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, between lines 6 and 7, insert the following:

(g) Not more than two members of the Board may be members of the same political party.

Mr. DOLE. All this amendment does is to make certain that the composition of the Energy Mobilization Board will be bipartisan and will assure that political or philosophical differences will not dictate national energy policy. This amendment will require that not more than two of the Board members may belong to the same political party.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to us.

The PRESIDING OFFICER. Without objection, the amendment is acceptable under the previous order as being a germane modification to amendment No. 488. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DOLE. Mr. President, in the time I have remaining I would just suggest that after the motion to table has been defeated, I will offer a grandfather clause, a grandfather amendment. It seems specious, at best, to permit passage of State or local legislation which would inhibit the completion of a priority en-

ergy project after it has been designated as such. I will discuss that in more detail following the vote.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Who yields time?

Mr. JOHNSTON. Mr. President, I congratulate the proponents of the substitute for being able to keep a straight face throughout this entire debate and to be able to present this amendment as if it really would cut redtape and help the situation.

The fact of the matter is, Mr. President, that the substitute amendment would make matters worse than they are now, and they could hardly be worse than they are now. We have the Sohio pipeline that, after 5 years, and $50 million invested, with 700 permits, was still not able to get a permit.

At Seadock they spent $20 million and were unable to get a permit. Eighteen different refineries have tried to locate on the east coast and are still unable to build their refineries. In the meantime the administration gives them $5 per barrel, a subsidy paid by other people.

The present situation is untenable, Mr. President. What they would do under the substitute is allow the Energy Mobilization Board to set a time schedule, but there are two provisions: One, it could not be inconsistent with any local procedural law; and second, it could not be enforceable unless you go to local courts. So, Mr. President, what you would have is a time schedule that could not be any shorter than it is right now, and then to get it enforced you would have to go to a proliferation of local courts.

Then, Mr. President, on appeals there is no consolidation of appeals in their legislation. You would be going to different State and county courts, courts of appeal on the State level, the supreme court at the State level and, Mr. President, it is a bonanza for lawyers, the substitute amendment is; and, of course, there is no grandfather clause, so they make it entirely feasible for States to come in and change their minds after permits have been granted, after construction has started, after millions and perhaps even hundreds of millions of dollars have been invited.

Under our bill, Mr. President, there is a real ability to make that time schedule. There are consolidated appeals, and there is a grandfather clause which says that after you have invested money and gotten your permits, the permits cannot be changed except in the interest of health or safety. In the interests of health or safety, they can be changed.

Mr. President, if this substitute amendment passes, I think everyone on the committee, certainly myself, would strongly oppose this bill because it would be adding a layer of bureaucracy, it would be adding a new series of lawsuits, a new series of appeals to an already overburdened situation.

Mr. President, the situation is more than serious in this country with respect to energy. The situation is critical. Unless we are able to face up with courage and intelligence today to this issue, then, in my judgment, there is almost no hope for this country in energy. Unless we are willing to cut through this redtape, we are in bad shape.

I reserve the remainder of my time.

Mr. DOMENICI. Mr. President, will the Senator yield 3 minutes to the Senator from New Mexico?

Mr. JOHNSTON. I yield 3 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, if there is one thing the people of this country have been clamoring for and that a compelling majority of almost every person in a leadership position in this country has been saying, it is that America must find a way to cut the redtape and get on with building needed critical energy projects.

The Senate should have no misunderstandings about where we are. The Energy Committee was charged with the responsibility of trying to come up with some legislation to permit the so-called fast track for critical energy projects.

I believe we came forth with a bill, and the 11-to-3 vote clearly indicates on that committee while it is not an extreme bill on the side of waiving substantive law, yet it has a chance of getting some expediting.

For those who want to support the bill prepared by the Environmental Committee in the Senate, supported by Senator RIBICOFF and Senator MUSKIE, those people had better be prepared to acknowledge that they are not for a fast track at all under any circumstances.

Because a clear reading of that proposal will indicate that there is no intention to really expedite even the time involved. All that we do is say, "Business as usual is not going to work." They say, "Business as usual with a new bureaucracy equals fast track." Mr. President, it equals nothing.

To those Senators who think that we are causing the environment of America to be deteriorated, I want to make just one point: It is the substantive law of America that keeps it clean. It is the substantive law of a State that keeps it clean. We cannot repeat too often that we do not waive that. We even put in clarifying language that we do not intend to give anybody authority to waive that.

So to the argument about a plant, a synthetic fuel plant or refinery hurting our health, let me say it will not hurt it any more than the adherence to the substantive law which the environmentalists want to keep.

They want to go overboard and be overbalanced on that side. That is not what happens here. The States rights argument is an absolutely patent red herring for those who do not want any fast track. They would go to their States and say, "Come up here and object to this, because it is taking some rights away."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. Thirty seconds.

All it is doing is set a reasonable time frame, even for the States; but if the permit is not credible under substantive law within the time frame, it is not granted. That is where the clean air would be affected, the clean water would be affected, the toxic substances would be affected, the pristine areas would be affected. If you waive the substantive law, it will increase the consolidation of the time frame. We cannot repeat often enough, we do not do that. So we urge that that proposal be tabled and our bill be subject to amendment. Certainly it can be clarified and amended, but it ought to be the pending business, not a substitute that did not even come under committee jurisdiction.

Mr. RIBICOFF. Mr. President, I yield 30 seconds to the Senator from Minnesota, to be followed by 30 seconds to the Senator from New York.

Mr. DURENBERGER. Mr. President, I am pleased to cosponsor the Ribicoff substitute. We are indebted to Senator RIBICOFF and Senator MUSKIE for this thoughtful, reasonable, workable legislation that has great promise to facilitate decisions regarding national energy priority projects and I want to join in comments offered by the senior Senator from Illinois, Mr. PERCY, on yesterday afternoon. I believe the Ribicoff substitute achieves this without circumventing either the spirit or substance of environmental law.

This bill reflects much of what I learned in discussions with Minnesota citizens, environmentalists, energy industry members, and State agency staff. Several meetings have been held in Minnesota since the energy mobilization concept was first raised last June. As a result, several recommendations were made which have been included in this bill. I would like to call to your attention, two of the recommendations we forwarded to Senator RIBICOFF, Senator MUSKIE, and the Energy Committee and compare the treatment in the Ribicoff substitute and S. 1308 also being considered today.

A single Federal/State EIS was recommended by the Minnesotans who reviewed the Energy Mobilization Board concept. However, this was treated quite differently in each bill, although both included the single EIS provision.

In S. 1308, the EIS, instead of being a meaningful technique to provide for sound decisions, is reduced to a meaningless exercise. The Board chooses the "lead" agency to write the EIS and can order that the agency act, "without requiring assistance from any other Federal agency."

The Board may allow the EIS prepared by a single agency without consultation with other Federal or State agencies to be used by "any or all Federal agencies to satisfy NEPA and by any or all State or local agencies to substitute for any comparable statement required by State or local law." The EIS under S. 1308, clearly does not require that agency officials have considered significant environmental impacts. It merely makes an appearance of meeting the NEPA requirement.

In the Ribicoff substitute the Board, after consultation with the CEQ and the appropriate Federal/State and local agencies, may require the preparation of

a single EIS that would satisfy Federal, State, and local obligations pursuant to NEPA. This procedure will strengthen the CEQ's recently prescribed rules and regulations designed to streamline the EIS process. The Ribicoff substitute encourages Federal/State/local support, depends on simplified regulations, which are the result of years of experience with the Federal EIS process, and is in keeping with the intent of NEPA to encourage wise decisions regarding project development.

Careful development of criteria to guide project designation was stressed by the citizens representatives. Again, this provision provides for clear comparison between S. 1308 and the Ribicoff substitute.

S. 1308 has only one criteria for the designation of the unlimited number of projects which it appears can be submitted to the Board for designation as a priority project. The one criteria is that the project is likely to directly or indirectly reduce the Nation's dependence on imported energy.

Further, the Board's decision to designate a project is not subject to judicial review, although its failure to designate a project can be appealed to the courts. Despite language in the bill report that states, "the committee fully intends that the Board carefully limit the number of projects receiving treatment at any one time. * * *"

S. 1308 actually provides enormous decisionmaking power in a Presidentially-appointed Senate-confirmed Board, with only the broadest single criteria to guide their actions. No judicial review is allowed to assess the decisions or number of projects they designate for the "fast track" process. The Board is allowed only 60 days to make a decision in a project regardless of the number of applicants. Obviously, the pressure, political and statutorially dictated would be considerable. It would seem that decisions of the Board would be made under a good deal of duress.

This bill has provided a structure that could result in chaos, but cannot be challenged. Because of the potential workload in the priority project designation process, the growth of a sizable bureaucracy seems predictable. Certainly an increase in the bureaucracy was not recommended by my constituents.

On the other hand, the Ribicoff substitute has limited the designation to not more than 8 projects per calendar year, with not more than 24 projects that may be designated and pending certification at any one time.

The Board must make their decision in relation to a statutorily established list of criteria which relate to the projects potential for reducing oil imports.

As well, the Board must consider during the designation process, the projects ability to make use of renewable energy resources, promote energy conservation and develop new energy production or conservation and public comments.

The designation process will be conducted with the Secretary of Energy's assistance. The Secretary will limit the list of applicants to those deemed to satisfy best the criteria in the bill. The Board will make the final decision, which is subject to judicial review. Again, the Ribicoff substitute provides a well-thought-through system and provides congressional criteria for decisionmaking.

There are other strong negative contrasts between S. 1308 and the Ribicoff substitute such as the grandfather waiver in S. 1308 and the right to make decisions in lieu of agencies if a deadline is missed, which I object to in S. 1308. It is fair to say that S. 1308 is one of the most significant changes in intergovernmental operations in recent memory and if enacted it will have great impact on States and municipalities.

It seems to me that in a democratic society, until there is consensus as to the overriding necessity for taking certain actions, such as the development of synthetic fuels, it is extremely important to construct the Energy Mobilization Board with great care. We must be sure that we achieve the goal of expedited decisions and projects without jeopardy to Federal-State relations and the public health and safety.

Our present energy problems have not resulted from State and local inaction or obstinence. We must listen to the Governor's Conference assertion that cooperative—not coercive federalism is the key to energy development in this country.

I believe the Ribicoff substitute provides for and builds in a cooperative accountable, coordinating system which will provide an expeditious path to national energy independence. I strongly urge your support for the bill.

Mr. JAVITS. Mr. President, I am a cosponsor of and support S. 1806, the Ribicoff-Muskie Energy Mobilization Board Act of 1979 offered as a substitute on this bill. I believe this substitute has three characteristics which distinguish it from the bill: First, it will speed up energy facility permitting processes; second, it protects the constitutional right of the people to due process; and, third, it maintains the character of our Federal system.

Let us remember the effort will be made to table the substitute and that would kill it. I feel it should be kept alive in which case it would be amendable.

I would like to emphasize right at the beginning of my remarks the somewhat neglected fact that this is the only proposal which is entirely certain to get up to 2 dozen critical projects at a time moving much faster toward final implementation than would otherwise be the case. It runs none of the dangers of, being challenged and delayed on constitutional grounds as does the Energy Committee proposal. If, as I indeed believe, the Nation wants its governmental system to break out of redtape and mismanagement and to implement expeditiously sound choices about our energy future, this substitute offers the tools to do so.

The importance of designing an institution which fits within our Federal framework cannot be overstated. The substitute, both designates critical energy projects and establishes its binding deadlines in consultation with the States. As the National Governors' Association has pointed out in a letter of September 28 to Chairman RIBICOFF—there will be a serious constitutional question raised as to whether at least some of such decisions are enforceable unless arrived at through such a voluntary project decision schedule agreement. Furthermore, it is likely to be impractical to force a State into a schedule it is unable or unwilling to meet. Indeed, I doubt the Board proposed by the Energy Committee would end up in many cases in fact forcing a schedule which States or relevant localities did not agree to.

Most important, the only proposal which is going to be sure to get desirable energy projects moving faster is the Ribicoff-Muskie proposal, S. 1806.

It is obvious that one major threat of delay should S. 1308 become law stems from the probability of constitutional challenge to the possibility of mandatory deadlines being imposed on States, by the substitution of a Board decision for a State decision in a matter where no Federal law pertains, and finally by the question of denying State courts jurisdiction over State laws affecting critical projects. This legislative question could be before the next session of Congress again, so that a year would thus be lost before a fast-track procedure is in place.

Suppose, however, that the Board set up by S. 1308 does in fact exist and that upon failure of a State body to decide, it undertakes to substitute its own judgment. First, it must build a record, which will probably not exist if truncated or incomplete procedures are involved, then it must assess the data, and the options. This will involve a large staff of legal and environmental and economic experts. Mr. President, the Board should not be another monstrous bureaucracy of the sort we are trying to curtail. It is a coordinating and facilitating body, not a new EPA. The promises of S. 1308 make it impossible to build a lean and fast-acting entity that can unsnarl the problems facilities face today without creating new ones. The size of a staff that can handle 75 such projects, instead of the more reasonable 24 contained in S. 1806, is, frankly, mindboggling.

Finally, there are incentives for delays built into S. 1308, as some parties may well prefer decisions to be passed to the Board. State and local officials may find it useful to pass the buck on controversial proposals, especially when they would have to commit staff resources to timely decisionmaking. Applicants whose projects are controversial or politically visible may well prefer a decision by Presidential appointees unfettered by conflict of interest laws.

Indeed, when one looks dispassionately at the causes of delay in past projects—Federal and State procedures are rarely the major problem. Marginal economics, other substantive questions, congressional inaction, and delay by the applicant are just as important as delay factors. I ask unanimous consent that a letter from the chairman of the Council on Environmental Quality, Mr. Gus Speth, and a summary of a study pre-

pared by the Congressional Research Service of the Library of Congress, and a chart prepared as a draft by the Office of Management and Budget be printed in the RECORD following my remarks, all of which demonstrate the real causes of project delays in contrast to the rhetoric on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1 and 2.)

Mr. JAVITS. In summary, what we need is a body that can clean up the complex decisionmaking process the Nation has put into law in fragments so as to make sound decisions regarding a few energy facilities which have the potential for significantly furthering our national energy goals and reducing imports. We should not be expecting to approve projects which fall short of energy and environmental standards Americans have decided are important; but we should be finding better ways to judge on the basis of those standards. I suspect that a body which can program and coordinate sound decisionmaking will end up being a model for permanent reforms in our permitting practices; but it should be tried first, as the exact nature of the changes needed is simply not known to us today.

The second quality of the substitute is that it protects important procedural rights. For example, the carefully designed administrative practices which Federal agencies have adopted pursuant to the Administrative Practices Act exist for the purposes of insuring individual rights be protected in agency proceedings as well as for establishing a clear record for making and evaluating agency decisions. Yet section 19 of S. 1308 permits waivers of these practices. Nor are such waivers apparently subject to judicial review.

Furthermore, the right of the public to participate in decisions is inadequately protected. As the chairman of the Senate Judiciary Committee Senator KENNEDY has written to the chairman of the Senate Energy Committee:

> These projects will often have enormous health, safety and environmental ramifications. Thus, legislation eliminating "red tape", should be careful not to preclude input from those groups which will contribute substantially to understanding these ramifications.
>
> I would urge the inclusion of a number of administrative procedures to increase participation in the Energy Mobilization Board decision-making process—particularly with respect to the designation decision. These procedures would not unduly slow down the process, and would improve the quality of the Board's proceedings.
>
> It is also crucial to give standing rights to persons who wish to challenge, on public health grounds, decisions concerning the designation or construction of Priority Energy Projects.

And, finally, as I have noted, it is clear there are likely to be constitutional challenges to the powers of the Board proposed in S. 1806. National attention has been given to the more visible issue of whether the Board may substitute its decision for that of the State or locality if a deadline is missed. The substitute does not propose to inject the Board's judgment instead of that of the appropriate body in our Federal system. Rather, it enforces the original schedule through the courts.

Further, our legislation also provides for expedited judicial review in Federal court and for use of the State courts to enforce the Board's deadlines where matters of State law are involved. As the chairman of the Senate Judiciary Committee pointed out in his September 13 letter to the Energy Committee chairman:

> Noted legal scholars have viewed the 'protective jurisdiction' doctrine, which is used to justify federal jurisdiction over cases arising from actions based entirely on state or local law as a difficult one which has not been determined by the Supreme Court.

And, the National Association of Attorneys General expressed its concerns in a memo of September 11. The memo says:

> The constitutional question is naturally the initial concern. It is unclear what the White House has in mind as a source of authority for the EMB to modify procedural requirements. A related EMB power, that of exercising state and local agency powers if the agencies in question fail to meet an EMB deadline, simply asserts that the offending agencies must delegate their authorities to the EMB. This is a questionable theory. Consider in this regard a state energy facility siting law, which is implemented by a state agency. Note that there is no federal analogue to such legislation, and that there is no federal law prohibiting such legislation. It is immediately difficult to see how Congress can authorize the EMB to exercise the powers of that state agency, since Congress did not create the agency and is not the source of its powers.
>
> Bear in mind that the Constitution is a sort of checklist, identifying the powers of the federal government and implicitly denying the federal government powers that are not on the checklist. There does not appear to be any power of the Congress which can force the state to delegate authority, the EMB cannot tinker with state procedures. In fact, a strong case can be made that any such attempt to mandate state delegation would be an unconstitutional intrusion on the sovereignty of state governments. While this case is likely to be strongest where an exercise of the commerce clause power is specified, it is likely to be sound no matter what Congressional authority is asserted.

The proposal for "grandfathering," so that laws passed after inception of a project may be waived by the Board, has similarly been questioned. There are legitimate reasons related to protection of the public health and safety as to why State laws affecting new energy technologies might be enacted as new projects are designed, scrutinized and found to be in need of corrective action. To deny this possibility to the public and the States is not, and should not be, the purpose of this measure.

Mr. President, the management of so large and complex a society as our own is always difficult. Our job is to reform and build on the knowledge and decisionmaking tools we have, the substitute meets the need far more effectively and will give our national energy program the underpinnings it needs.

EXHIBIT 1

NEPA LITIGATION AND ENERGY PROJECTS

The Council's review of NEPA litigation shows that during the first 8 years since NEPA's enactment (January 1, 1970 through December 31, 1977) 70 Federal agencies have prepared more than 10,000 EISs on their major Federal actions significantly affecting the environment.

During this 8-year period 938 NEPA lawsuits were filed. This represents slightly less than 10 percent of all projects involving the preparation of an EIS. Overall, NEPA-related injunctions were issued in 202 cases or in approximately 21.5 percent of all NEPA lawsuits. It is important to note, however, that these NEPA-related injunctions represent only 2 percent of all major federal actions involving the preparation of an EIS.

With respect to energy projects and NEPA lawsuits, the Council's review reveals the following: of the 938 NEPA lawsuits brought during NEPA's first 8 years, 94 cases involved specific energy projects. This represents approximately 10 percent of all NEPA lawsuits. The type and number of energy projects involved in NEPA lawsuits is summarized as follows:

Type of Energy Project:	*Number of NEPA lawsuits*
Nuclear Power Plants	26
Electric Transmission lines	15
Hydroelectric Power Projects	10
Outer Continental Shelf Oil & Gas Lease Sales	9
Fossil Fuel Power Plants	9
Coal Prospecting and Mining Activities	9
Oil & Gas drilling projects (other than OCS)	6
Miscellaneous Energy Projects	6
Pipelines	4
Total	94

About 50% of these cases involved energy projects where the federal agency with lead responsibility failed to prepare an EIS. The Council anticipates that this kind of NEPA lawsuit will significantly decline in the future especially in light of the Council's NEPA regulations which go into effect July 30, 1979. In the remainder of cases, inadequate compliance with NEPA's procedural requirements was alleged, often as a subsidiary claim (that is, where the principal legal claim was a violation of a statute other than NEPA).

Looking at NEPA-related injunctions involving energy projects, the Council found that of the 94 NEPA lawsuits involving energy projects filed during the first 8 years after NEPA's enactment, only 15 cases resulted in NEPA-related temporary or preliminary injunctions. These 15 cases represent about 16% of NEPA cases involving energy projects but only 1.6% of all NEPA lawsuits.

The Council believes that NEPA's requirements, which have been enforced by the courts, have produced more careful consideration by Federal agencies of less environmentally damaging alternatives and mitigation measures for proposed energy projects in furtherance of NEPA's national environmental goals and policies. The presence of judicial review has provided a healthy impetus for federal agencies to observe NEPA's requirements and has resulted in better federal decisions involving energy projects.

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., July 23, 1979.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Energy & Power, Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. CHAIRMAN: During my testimony at the hearing on Friday, July 20, you asked me to provide you with available information on the time it takes agencies to prepare EISs. I said that I would promptly supplement my answers with a letter. The best available information is contained in CEQ's 1976 Report Environment Impact Statements: An Analysis of Six Years' Experience

by Seventy Federal Agencies. Enclosed is Table 5 of the Report which summarizes the agency experience in the time required to prepare EISs. As the Table shows, 20 out of 28 agencies experienced an average time of less than 12 months in preparing their draft EISs. We have no updated figures covering the period 1976 to the present on the time required by agencies in preparing EISs.

However, as you know the Council has taken steps since 1976 to accelerate the process. In 1977, at President Carter's direction, the Council began a year and a half effort to reform the NEPA and EIS process to reduce delays, reduce paperwork, and improve agency decisions. The result of this effort is the Council's NEPA regulations which become effective next week, July 30, 1979. These regulations have, as you know, been greeted with enthusiasm from a broad range of affected Americans, from business to the Governors' Association to environmentalists.

The NEPA regulations will reduce delay by:

1. Requiring agencies to set time limits appropriate to specific actions when applicants request them, and encouraging agencies to set time limits on EIS preparation;

2. Requiring agencies to integrate the NEPA process into early planning;

3. Emphasizing interagency cooperation before the EIS is prepared rather than submission of adversary comments after the EIS is done;

4. Providing for a swift and fair resolution of lead agency disputes, with time limits;

5. Establishing the scoping process for early identification of what are and what are not the real issues;

6. Requiring agencies to prepare the EIS as early as possible;

7. Requiring agencies to integrate their NEPA compliance with other environmental review and consultation requirements;

8. Providing for joint Federal-State-Local preparation of EISs, joint Federal-State-Local public hearings and other means to eliminate duplication;

9. Requiring agencies to combine their environmental documents with other documents to avoid duplication, and permitting incorporation by reference;

10. Providing for accelerated procedures in preparing EISs for proposals for legislation;

11. Providing for categorical exclusions (identification of all actions exempt from environmental review because they will not have significant environmental effects);

12. Providing for a concise finding of no significant impact to document cases where no EIS is necessary;

13. Providing for page limits on EISs (normally less than 150 pages; for complex proposals, normally less than 300 pages).

As a result of these reforms in implementing NEPA and in particular the environmental impact statement requirement the Council believes that agencies will be able to achieve substantial reductions in the time they have required, up to now, for preparing EISs. As I testified on Friday, it is very realistic to anticipate timely completion of the EIS process in the vast majority of cases even under the most rigorous accelerated decision schedule (not less than 12 months under the Administration proposal) set by the proposed Energy Mobilization Board. As we said in the Council's testimony, CEQ stands ready to assist in insuring that this happens. The one exceptional case might be that of scientific uncertainty—where we cannot predict effects, which may cause severe harm, of an untried technology. While the EIS could be completed, the data in it, like any other data needed for the decision, might be incomplete. In that regard I would reinforce Eliot Cutler's testimony on the issue—that in such a case it would be appropriate either (1) for the decisionmaker to turn down the proposal, or (2) to extend the time until answers are available. By way of further answer I enclose 40 C.F.R. Sec. 1502.22 (effective July 30, 1979), which represents the Council's handling of this difficult issue in its NEPA regulations issued pursuant to President Carter's Executive Order 11991.

Please do not hesitate to call on us if we can be of further assistance.

Yours truly,

NICHOLAS C. YOST,
General Counsel.

EXHIBIT 2

ENERGY DEVELOPMENT PROJECT DELAYS

At the request of the Senate Subcommittee on Environmental Pollution, we undertook a review of delays in non-nuclear energy development projects. This review focuses on ascertaining the causes of delays in selected energy projects, with a view toward providing background on the need for and implications of proposed "fast track" legislation.

We selected the following energy projects for review:

1. Kaiparowits—a large, coal-fired, minemouth electric generating facility located in Utah, originally proposed in 1962 and finally abandoned in 1976.

2. Dickey-Lincoln—a hydroelectric project, originally authorized in 1965, on the St. Johns River in Maine; bills both to fund construction and to deauthorize the project are pending before Congress.

3. Eastport refinery—proposed in 1973 to be built in Maine, the project at present is stymied, in part because of EPA's rejection of certain permits.

4. Hampton Roads refinery—proposed in 1975 to be built in Virginia, the project is at present awaiting a decision by the Corps of Engineers.

5. SOHIO pipeline (PACTEX)—proposed in 1975 as a route for transporting excess Alaskan crude oil to the Gulf States area, the project was abandoned in 1979 after delays in approval reportedly pushed its completion date beyond the time when costs could be expected to be recovered, based on expected oil supplies.

6. Oil shale—leasing programs began in 1971, but progress has been slow and commercial production is not expected before 1983.

These six cases were chosen for reasons of convenience, familiarity, and diversity. It is not suggested that they are representative or nonrepresentative of any particular type or class of regulatory problems.

When assessing these case studies in terms of their implications for "fast track" proposals, two caveats are necessary:

1. The case studies are of projects that were proposed in a period of innovation and flux in environmental statutes and regulations. Consequently, there has been a problem of "moving targets," and planning these projects has been particularly difficult. It is possible that environmental statutes and regulations are maturing, and that for the next several years changes in requirements will be fewer and less burdensome; nevertheless, the case studies are illustrative of the sorts of regulatory problems cited as justifying the "fast track" concept.

2. Extracting the actual implications of environmental regulations on these projects is made difficult by other unsettling forces affecting planners. The economy, so stable during the 1960's, has changed in puzzling and unpredicted ways. And energy prices and availability, taken for granted in the 1960's, have become major uncertainties. As a result, many planning assumptions, particularly concerning rates of growth of energy demand and rates of inflation, have been disrupted. These energy and economic uncertainties to some extent are compounded by any environmentally caused delays, since if the time required to obtain various construction and environmental permits is extended, economic considerations may cross a threshold that would not otherwise have been reached. But to some extent it is probably also true that environmental controls have been the whipping boy for other negative economic forces.

Given these caveats, a review of the case studies points to two basic conclusions: First, that it is difficult to attribute the delay of foreclosure of construction of energy development facilities solely to substantive Federal environmental protection laws; and second, that usually it appears that a general lack of consensus on the need for the project, at least as proposed, underlies the difficulty promoters of the projects have faced in trying to obtain necessary regulatory approvals.

1. For each of the six case studies, factors other than environmental statutes appear important in causing delays.

For Kaiparowits, changing environmental requirements, particularly air pollution control requirements, did substantially disrupt planning; however, at the same time changes in the economy and energy demand were also important.

For Dickey-Lincoln, present delays can be attributed to Congressional hesitation to authorize funding for the project; it may be that some of that reluctance stems from environmental considerations, but it is Congress which is in a position to decide whether it should go ahead.

For the Eastport Refinery, the proposal is at present stopped because of the rejection of a permit on the grounds approving it would violate the Endangered Species Act; however, there is every reason to believe that numerous other probable roadblacks to the project exist, including international considerations that would transcend domestic environmental protection constraints.

For the Hampton Roads refinery, the proposal is at present awaiting a final decision on a key permit.

For the SOHIO pipeline (PACTEX), the working out of new air pollution regulatory procedures was a major cause of delay; however, at the time the project was abandoned these had been overcome, and it appears that environmental requirements would not have foreclosed construction; this, then, is a case where delays caused economics of a project to cross a threshold of unacceptability.

For oil shale development proposals, the issue is one of developing new technologies; environmental controls are but one of the uncertainties affecting their development.

In short, although environmental considerations have been important constraints on the proposers of these projects, they have not been the sole constraints. In fact, the case studies suggest that the regulatory hangups suffered by these projects most often arise from underlying doubts about the projects, and that these doubts have often found their readiest expression in regulations based on environmental considerations.

2. In some of the cases, the underlying uncertainty arises from the doubt about the need for the project at all, in others it arises from uncertainty about siting, about alternatives, or some other aspects of the proposal. Of course, for virtually any proposal, someone will have objections or criticisms: but the more that this type of uncertainty is present, the more objectors there are likely to be and the greater their legitimacy. Most importantly, the greater the doubts, the more likely it is that critics will find sympathetic ears among decisionmakers. This, combined with the multitude of regulations and of governmental interests involved, increases the probability that a veto or holdup will occur at one or more of the numerous decision points.

Two of the case studies shed light from different angles on the nature of this source of delay: the PACTEX proposal illustrates that when consensus on the need for a project exists, it does move ahead; the Dickey-Lincoln project illustrates that when consensus does not exist, the absence of regulatory holdups does not mean it will automatically go ahead.

The SOHIO pipeline proposal was widely perceived as being in the national interest. Much of the delay concerned how to implement new procedures, but some hardline objectors existed, too. However, the general consensus that the project should go forward was reflected in a number of ad hoc efforts to clear roadblocks; and a bill passed the California legislature to resolve litigation challenging approval of the project. It appears that the underlying consensus in favor of the project was sufficient to get most of the roadblocks cleared (albeit too late for the economics of the project to be sustained).

In the Dickey-Lincoln case, the roadblock is legislative, not regulatory. And in this arena where, presumably, action by consensus would be possible without the project having to run the regulatory maze, funding is still iffy. It appears, then that consensus for (or against) the project is lacking, so it languishes—just as are so many projects lost in the regulatory maze.

This illustrates that where an underlying consensus is lacking, projects will not necessarily go forward even if there are no significant regulatory hurdles; or put the other way, the delays of the regulatory hurdles generally seem to reflect a genuine uncertainty about the proposal. Indeed, it appears that environmental requirements have become a convenient and effective point of access to decisionmaking for critics of individual energy projects, whether on environmental or on social, economic, philosophical or other grounds. When clear agreement on the national essentiality of any particular project is lacking, achieving final approval becomes exceedingly difficult—in either the regulatory or the legislative areas. Once a critical level of consensus is reached, however, relief is likely to be forthcoming. The opportunity for Congress to clear the way for energy projects is illustrated by the enactment of the TransAlaska Pipeline Act.

Mr. JOHNSTON. I yield 30 seconds to the Senator from Wyoming.

UP AMENDMENT NO. 591

(Purpose: Provide for cooperative agreements between State and local governments and the EMB for establishing deadlines)

Mr. WALLOP. Mr. President, I send an amendment to the substitute to the desk, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP), for himself, Mr. ARMSTRONG, Mr. ROTH, and Mr. HATCH, proposes an unprinted amendment numbered 591 to amendment No. 488.

Mr. WALLOP. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 27, line 16 after the period insert the following: "Where possible, the Energy Mobilization Board shall negotiate and enter into written cooperative agreements with each affected state and local government establishing the deadlines."

Mr. WALLOP. Mr. President, what this amendment would do is ask the Energy Mobilization Board, wherever possible, to try to establish a project decision schedule through written cooperative agreements between affected States and the EMB and between affected local governments and the EMB. A written cooperative agreement will establish a legal basis for the decision schedule.

The amendment does not make cooperative agreements mandatory but rather permits the EMB to use cooperative agreements as an option to establish decision schedules.

This amendment is needed because it is questionable from a constitutional standpoint whether a decision deadline set by the Federal Energy Mobilization Board would be legally binding on a State or local agency if such agency had not explicitly agreed to the deadline. This is a particular problem in cases where the State statute in question has no Federal antecedents such as is the case with the Wyoming industrial siting law. A written cooperative agreement will provide the basis for later use of enforcement mechanisms if the deadline is missed. Without the cooperative agreement, it is questionable constitutionally whether any enforcement mechanism could be legally enforced.

There is precedent for cooperative agreements as this amendment provides for. Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 permits the Secretary of Interior to delegate authority to the States to enforce surface mining regulations on Federal lands. This delegation of authority is established through cooperative agreements signed by the individual States and the Department.

Mr. President, this amendment is strongly supported by the National Governors Association and is consistent with my interest in forging a cooperative, rather than a coercive, Federal-State relationship toward the shared goal of energy self-sufficiency.

I understand the amendment is acceptable to Senators RIBICOFF and MUSKIE, and I ask unanimous consent that the names of Senators ARMSTRONG, ROTH, and HATCH be added as cosponsors of this amendment, and that the name of Senator MCCLURE be added as a cosponsor of the previous amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Does the Senator from Connecticut accept the amendment as an amendment to amendment 488?

Mr. RIBICOFF. I accept it.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the Senator from Washington.

Mr. JACKSON. Mr. President, an important part of the debate on the Energy Mobilization Board is now drawing to a close. I will not try to summarize that debate here. But I do want to note how curious it is that much of the discussion has been about the risks of giving the Board authority to get things done. Do not misunderstand me. I do share the concerns of my colleagues about protecting the environment and preserving the proper role of the States. I am, after all, the author of the National Environmental Policy Act. But somehow our punctilious concern for the environment and States' rights has dominated this debate, while many of us seem to have forgotten that it is our future, and the very future of this Nation which is the essence of what is at stake. I therefore want to devote my remarks to the risks of not giving the Energy Mobilization Board enough power, and to mention the key points with which we should concern ourselves.

Never before in the history of this Nation have we been more vulnerable to foreign blackmail, foreign intimidation, and foreign intrigue. The United States now consumes over 19 million barrels of oil a day and over 8 million barrels or 42 percent comes from abroad. A drop of less than 3 percent in imports could wreck havoc on our economy, as evidenced by the Iranian cutback earlier this year. Yet I could reel off a dozen scenarios, any of which could occur tomorrow, in which we would experience an even greater shortfall in supply.

Iran is teetering on the brink of anarchy. Smouldering religious unrest in Iraq could erupt overnight. The Saudis, ever sensitive about offending their neighbors, could cut back production, or hostile leaders in Algeria and Libya could suddenly shut off their supplies. Any one of these events, or a score of others, could quickly bring the United States to its knees.

Mr. President, we are now so vulnerable we cannot even protect ourselves without being threatened with retaliation. We have the best army, the biggest nuclear arsenal, and the greatest navy in the world, but we cannot fill our strategic petroleum reserve because Saudi Arabia will cut back our oil. We are a pitiful helpless giant in the eyes of the rest of the world. This Congress now has a chance to do something about it—by supporting an Energy Mobilization Board.

Mr. President, this debate has focused too much upon remote and hypothetical dangers of a powerful Energy Mobilization Board, and not enough on the clear and present danger of our continued dependence upon imported oil.

Peace efforts in the Middle East, monetary agreements with Europe and Japan and efforts to stabilize our own economy are undermined by our dependence upon imported oil.

The value of the dollar is plummeting, gold is now over $425 an ounce, wage earners, the elderly and others on fixed income cannot make ends meet, because of our dependence upon imported oil.

And if another shortage occurs this winter, and mark my words it is likely, Americans will go without heat and workers without jobs, because of our dependence upon imported oil.

You can talk all you want about hypothetical risks and speculative dangers. I am talking about real risks, real dangers and they are here with us now—because of our dependence upon imported oil.

Mr. President, the American people are a strong and resilient people and they respond with courage and determination to

a challenge. But in fighting the threat of oil dependence, the greatest obstacle to success is ourselves. We have created an institutional crisis in this country. We no longer can get anything done. Everyone has the power to delay decision on energy projects, and too many decisionmakers are unwilling to decide.

Take Colstrip 3 and 4—powerplants in the State of Montana. Regulatory delays will block this project at least 5 years. As a result, the final cost to consumers will be over $1 billion higher, and we will import up to 40 million barrels of oil more over the next 5 years.

Take the Alaska natural gas pipeline—regulatory delays have blocked this project for several years. Each day of delay costs the consumer $3 million and increases oil imports by 600,000 barrels.

The list goes on and on—vital energy projects killed or seriously wounded by our own bureaucracy.

Mr. President, it is time that we stand up and make a choice—are we going to let this situation continue, or are we going to break loose from our own bureaucratic chains?

I would not deny there are risks in creating a strong Energy Mobilization Board and giving it the power to get things done. There are risks in doing anything worthwhile that has not been done before. But I will tell you one thing—the kinds of risks we are talking about are nothing compared to the price we pay each day for our dependence upon imported oil.

The vote on the Energy Mobilization Board is nothing less than a test of our will. By weakening the bill, we will only cast new doubts on our determination. The substitute amendment would create a new layer of bureaucracy, new complications, more redtape, and lead to even more delay. No Energy Mobilization Board is better than the impotent Board created by the substitute bill.

Mr. President, our dependence upon OPEC oil is one of the gravest threats this Nation has ever faced. It is time that we met this threat headon.

A vote for S. 1308 is a vote to meet the challenge. A vote for the substitute amendment is a vote to back down.

Surely, Mr. President, the country is not worried about doing too much. Senator after Senator has gone back to his State, and been asked, "Why are you not doing something about energy?" That is the issue.

Mr. President, if this substitute is adopted, I can only say to the people back home that we have decided to set up a paper tiger and we are not going to get anything done. We are going to have more and more bureaucracy.

That is what the people of this country are fed up with. They know that when a problem comes up you have to have a hearing. That is fine. But then we appeal from the hearing, and it goes on for years and years and years. The country would be getting that message from Congress again.

Mr. President, you can pass energy legislation until kingdom come, and without authority to implement the energy legislation that we pass, it is meaningless.

Under the substitute proposal, you have to go into court. Mr. President, if we had followed this same argument there would be no oil moving through the Alaska pipeline. I authored the Alaska pipeline bill with Senator STEVENS and others. The argument was, "Oh, you have got to have all these hearings, you have got to go on and on and on." The same thing is happening, Mr. President, on the Alaska gas pipeline measure. Because of the delays, it is costing $3 million a day, or $1 billion a year more.

What is the context in which we are acting here today? We face a world in which, as powerful as the United States with all its might is, we have to be humble to the Saudis, so we cannot even fill up our strategic reserve.

Mr. President, the sources of our supply are so fragile that we do not know tomorrow whether we will have oil, and we are dependent for 42 percent, currently, at this hour, on imports.

Mr. President, what about price? What about price? I turned the radio on this morning, and the Japanese were advised that the price under the new contract from Indonesia—some of my colleagues, I am sure, heard that broadcast—was at $36 and $38 a barrel. That is what this bill is about, $36 and $38 for a barrel of oil that, in 1973, was selling for less than $3 a barrel. It is the supply, the unreliability of it, and the price that can kill the Western world, and we stand here helpless, trying to get something done.

I can only say this, Mr. President: Woe be it to the Senator who has to face the electorate and say, "Well, I voted to set up this procedure which is going through this long, tedious process."

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. JACKSON. May I have 1 minute?

Mr. JOHNSTON. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 2 minutes and 8½ seconds left.

Mr. JOHNSTON. I yield 1 minute to the Senator from Washington.

Mr. JACKSON. Mr. President, the centerpiece of everything that we do in the area of energy is at stake in this vote at 12 o'clock, because without it, we cannot do anything about synthetic fuels. We cannot have a program to really move effectively to build the pipelines, to build the necessary facilities, whether it is refineries or what have you. The whole area of energy is meaningless, I do not care what bills we pass, unless procedurally, the American people can have due process. That is the issue.

It is not just a lot of talk about this right, that right. The rights of all of our citizens are amply protected. But as a great English jurist once said, "Justice delayed is justice denied." The American people cry out for justice and for action.

Mr. RIBICOFF. Mr. President, I yield myself 1 minute.

Mr. President, when the administration submitted its energy proposals in July, a White House assistant stated that, in the energy area, the time had come to move "from a government of law to a government of men." While I do not underestimate the gravity of the energy crisis, I do not agree with that assertion. I believe that Congress can fashion sensible, workable systems to bring online needed energy facilities more expeditiously without, at the same time, trampling our State and local communities and overturning our citizens' rights to due process. The pending amendment accomplishes this goal, while S. 1308 would take us far down the road toward an arbitrary government of men rather than a government of laws.

Let me briefly review the issues presented by the two bills.

First. Openness of government and public accountability.

S. 1308, in reality, does not create a collegial board, for in all matters except one, the chairman has sole decisionmaking authority. The chairman, who will act as a political officer in, or close to, the White House, is being granted unprecedented and dangerous authority to intrude upon Federal, State, and local responsibilities and destroy due process protections. Acting alone, he will not be subject to the Government in the Sunset Act, nor will he be subject to the normal safeguards included in the Administrative Procedures Act. Thus, decisions affecting the lives of hundreds of thousands of our citizens and many State and local communities will be made behind closed doors and with little or no public involvement. I can think of no better mechanism or scheme for producing turmoil and outright defiance from State and local communities than the imposition of such an unchecked czar.

In addition, the three other members of the Board who advise the chairman will not be subject to the normal conflict of interest laws. The administration and the Energy Committee have stated openly that the reason for this exemption is to allow major executives from energy companies to serve in these part-time positions. Thus, the chairman will be advised on decisions to eliminate State and local responsibilities, shortcut and curtail due process protections for affected citizens by a group of persons who may well have a direct interest in the projects under discussion. I do not see how such an arrangement could possibly achieve the credibility necessary to attain public support.

By contrast, the pending amendment provides for a three-member Board that makes its decisions collectively and is subject to the Government in the Sunshine Act, the Administrative Procedures Act and to conflict-of-interest laws.

Second. Enforcement.

The amendment provides for an efficient and effective means for the Board to enforce deadlines for regulatory actions by Federal, State, and local agencies. It gives the Board power to seek a court order compelling action in accordance with the Project Decision Schedule. It also gives the Board the authority to monitor closely Federal, State, and local agency actions and to move in before a final deadline is missed if there is evidence that through neglect, lack of leadership or dilatory tactics an agency will

at some future date not meet the deadline established by the Project Decision Schedule.

S. 1308 allows the Board to step in and make the decision if a Federal, State, or local agency fails to meet a deadline. This alternative enforcement mechanism will inevitably lead to more litigation and greater delay. Almost by definition, the issues raised in these priority energy project proceedings will be difficult, if for no other reason than that the projects will be large. Unlike the agency with the normal decisional authority, the Board will have no expertise in the areas covered, and will have to pick up in the middle of a particular case and start from scratch. Given those two factors, and assuming that the Board will attempt to do its substantive jobs properly, it is virtually certain that the Board will be unable to issue a reasoned decision in less than the time that the responsible agency could. And, if there is more than one missed deadline at a time, the prognosis for an accelerated decision is even less favorable.

Knowing that the EMB will step in and make a decision for it could also produce delay for another reason. It could lead Federal and State agencies faced with difficult policy decisions to delay their decision until after the deadline. This would shift the responsibility for any unpopular decision to EMB, but only at the cost of considerable delay in obtaining final agency action. S. 1308 would thus achieve exactly the opposite effect than the one intended.

Then too, any provision giving EMB the authority to make the substantive decision will inevitably create only more litigation. And this will in turn mean only more delay.

The Board would have to apply substantive law with which it is unfamiliar. It may have to apply both State and Federal law. Even assuming the Board can correctly identify the substantive law to be applied, it is a virtual certainty that every decision the Board makes of this kind will be appealed. There will be a real problem of the quality of the Board's decisions if it is called upon to decide a Clean Air Act question one day, a strip mining issue the next, and a local zoning variance the third—and still continue its duties of setting schedules and providing overall monitoring for the program. Given its lack of expertise, decisions of the Board are likely to be reversed far more often than those of agencies who originally had responsibility for making the decision. The Board will then have to spend time to redecide the case. And more delay will result.

Thus, even without considering the undesirable effects of establishing another substantial bureaucracy to make decisions properly left to State or local governments, or to other Federal agencies with the substantive expertise, the procedures in S. 1308 are unwise because they will produce more, not less, delay.

S. 1308 also raises serious due process questions. When the Energy Mobilization Board makes its decision, there is no requirement for a hearing, no requirement for cross-examination, no provision for witnesses to testify, no opportunity for affected parties to be represented by counsel. In short, it provides none of the protections that individuals or businesses would normally have when a Government agency makes a decision that directly affects them. And all of this will take place before a board which has no expertise in applying a law—whether it be an environmental law, antitrust law, zoning law, water law, or other law. Perhaps more important, the Board will not be a neutral decisionmaker; its single mission of promoting energy projects makes likely the appearance, if not the presence, of bias.

By contrast, our amendment insures that decisions will be made by agencies having specific expertise in the law which is to be applied, and the agencies will do so under procedures which protect the due process rights of affected parties. At a minimum, no decision can be made under our amendment without notice to all affected interests, opportunity for comment, and opportunity for representation by counsel. Full rights of cross-examination will be provided where it is needed. And it will be the agencies—not the Energy Mobilization Board—that will determine when to make cross-examination available.

Third. Intergovernmental relations.

Mr. President, during the past few years, the onset of the energy crisis has greatly exacerbated sectional and Federal-State tensions and conflicts. Yet if we are to work out solutions to our energy problems, the Federal Government must have the cooperation and support of State governments and local communities. S. 1308 does little or nothing to ease the existing intergovernmental conflicts. By contrast, the amendment has been crafted with help of State and local officials and for that reason has the endorsement of every organization representing State and local governments, including the NACO, National Governors Association, the National League of Cities, the U.S. Conference of Mayors, and the National Conference of State Legislatures.

The bill contains a number of provisions to protect the authority and rights of State and local governments. These include:

A mandate to the Energy Secretary to consult with State and local agencies before making a final selection of candidates for priority energy project status;

Provision that where a single environmental impact statement is called for, that statement must include all the factors and criteria in a State or local law or ordinance in the manner provided in that law or ordinance;

Allowance for a State or local government to undertake to complete those parts of an environmental impact statement that relate to its jurisdiction and concerns;

Preservation of State court jurisdiction on purely State law matters;

Provision for the use of State courts for the enforcement of the Board's deadlines in matters related to State laws;

Reenforcement of States' rights in the area of water law.

Mr. President, there are a number of other issues that are raised by S. 1308, but these are the most important. The solutions proposed in the amendment have received the endorsement of two of the most thoughtful and responsible organizations in the country, the League of Women Voters and Common Cause. In addition, this morning, the Washington Post directly endorsed the Ribicoff-Muskie amendment.

The following editorial appeared in this morning's Washington Post in support of amendment No. 488, the amendment in the nature of a substitute introduced by myself and Senators MUSKIE, GLENN, ROTH, PERCY, STAFFORD, HART, JAVITS, DURENBERGER, CRANSTON, WILLIAMS, PROXMIRE, MATHIAS, WEICKER, and BIDEN:

HOW FAST A TRACK

If the Nation is serious about expanding domestic energy production a mobilization board is needed to steer crucial projects on a "fast track" through the regulatory labyrinths. But how much muscle should such a board have? The Senate energy committee's bill, backed by the White House, takes an expansive approach. It would, for instance, let the mobilization board step in to make a decision if a federal, state or local agency missed a deadline. The board could also waive any impeding law or regulation adopted after construction had begun.

The Senate committee's bill goes too far. The case for it rests on some large and untested assumptions: that a number of big projects should be built in a hurry; that most regulatory agencies, especially in the states, will be unsympathetic and intolerably slow, and that mid-course adjustments will be few.

In fact, the Senate is showing more and more reluctance to rush into a huge synfuels program. A number of states, especially in the West, have responded to energy pressures and the threat of federal preemption and are overhauling their own laws. Indeed, delay at the state level is often less a problem than conflicts among federal agencies—not to speak of Congress' own uncoordinated actions.

All this argues for a more temperate approach that puts some projects on a fast track and lets the mobilization board enforce deadlines in court but nonetheless encourages decision-makers at every level to accept their responsibilities. The Ribicoff-Muskie substitute meets this test. It would create a sensible fast track but not a greased skid. It should be passed.

Mr. President, for all of these reasons, I urge my colleagues to vote against the motion to table this amendment.

Mr. President, I yield the remainder of my time to the distinguished Senator from Maine.

Mr. MUSKIE. Mr. President, I want to emphasize in the closing 2 minutes what that Post editorial said.

The distinguished Senator from New Mexico argued that those who are for the committee substitute are against expedited procedure. Mr. President, that is not the issue at all. The issue is, as stated in this last sentence of the Post editorial:

The Ribicoff-Muskie substitute meets the test. It would create a sensible fast track but not a greased skid.

Not a greased skid. My good friend from Washington argues that what we are concerned about is an energy problem. Of course we are. But he would imply that, therefore, we need not be concerned about another limited re-

source, the air within which the energy must burn. With what consequences? Constructive production, but also, pollution risks for the environment which not only affect the health of people but the capacity of the environment to sustain productive activity.

So, in his preoccupation with energy, he is not sensitive, as he should have been and as the committee should have been, to procedures which would protect not only the energy priorities of this country, but the environmental quality priority of this country.

The Senator from New Mexico argued that there is nothing in here that affects substantive law. We have discussed that for 2 days, and I read once before the language of the committee report dealing with section 19, which establishes the Board's authority to adopt special procedures—special procedures designed to modify the procedures created under existing law by the agencies involved.

What does the committee report say about that section? The committee intends to authorize agencies to make the changes enumerated in this section whether or not they can be categorized as procedural or substantive and whether or not they have substantive as well as procedural implications.

There is no provision of the bill which highlights this point more than the grandfather provision. That provision, Mr. President, would authorize the Board to waive any laws or regulation enacted or promulgated by a Federal, State, or local body after commencement of construction of a priority project.

What would be the implications of that waiver? It would say that it would remove the ability of all levels of Government to deal with unknown or unanticipated toxic environmental effects of energy facilities. Principally, we are focusing on the production of synthetic fuels. We do not have a synthetic fuels plant in a commercial state today. It is impossible to anticipate before the first shovelful of earth what the pollution implications of this new technology would be.

Senator RIBICOFF, in his Committee on Governmental Affairs, conducted hearings on those dangers. What this waiver provision does is remove the ability to act, once the first shovelful of earth is turned, to deal with such unanticipated pollution.

Second, it bars the possibility that technology to minimize these problems would be developed to assure the commercial viability of these processes. We have learned in the environmental laws that American industry and science have developed technology to meet the requirements of public health mandated by law. Now, if we prohibit, if we write into law this provision which says they do not have to worry about it, what incentive is there for American industry to develop the very technologies that make synthetic fuels a viable—viable not only from the point of view of energy but the environment as well—option in the energy crisis ahead?

The Senator from Washington speaks about the delays that would be generated by the substitute. Mr. President, the failure to develop controls will also guarantee continued resistance to the more widespread construction of energy facilities without adequate protection of the public health and safety of affected citizens.

If you think that, by limiting the right of judicial review—and with respect to the designation of fast-track projects, you eliminate it entirely except for those who are denied fast track. So there is unequal justice. If the Energy Board says, yes, you have a green light, no appeal. But if it says, no, you have no green light, no appeal. Well, if you think that kind of restriction on judicial review protects your bill from the judicial process once it becomes law, no one could be more mistaken.

The people of this country have found it possible, using all kinds of ingenuity, to get into the courts, whatever the law says.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself the remainder of the time.

Mr. President, this bill does not, I repeat, and anyone who can read the English language will tell you that the committee bill does not waive substantive law save and except the grandfather clause. Then you can come in and change the rules even after you get the permit if it is in the interest of health and safety.

Mr. President, the substitute bill is, I hate to characterize it as a joke, but I can find no other word that fits it because, Mr. President, while it allows the Board to set a time schedule, they cannot set a shorter time schedule than that allowed by local law and you have to go to a local court to enforce it. Do you know how long it takes to get on the docket of a local court? About a year. That is what happened to the Sohio pipelines, Mr. President. They were tied up in local court for a year trying to enforce the permit. They finally went to the Supreme Court and the Supreme Court remanded it down to the district court and it started all over again.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. Mr. President, today we in the Senate are debating not whether or not we will expedite action on priority energy projects. But rather how such priorities will be expedited. There are those in this body, however, who would have one believe that acceptance of anything less than the Energy Mobilization Board bill reported by the Energy Committee—S. 1308—is tantamount to obstructing our national goal of lessening U.S. dependence on foreign sources of energy.

Mr. President, I support the establishment of an Energy Mobilization Board as an important ingredient in the complex mix of legislative responses needed to help us solve our long, simmering energy problems. That is why I am pleased to be a cosponsor of the Ribicoff-Muskie substitute to the Energy Committee bill before us today. This substitute amendment provides for expedited decisionmaking for carefully selected new energy facilities required to achieve our national energy goals. However, unlike S. 1308, our substitute amendment would not sacrifice due process, or environmental, and public health protections provided under the law.

Mr. President, every Member of this body appreciates the importance of quickly coming to grips with the realities of the energy situation and making whatever tough decisions are necessary to lessen our increasing dependence on foreign oil. Yet, let us not be blinded by the need for quick, aggressive action into accepting the draconian measures presented to us by the Energy Committee in S. 1308.

How does empowering yet another Government agency with unprecedented authority to alter or waive existing laws in the process of expediting energy projects insure wise decisionmaking?

How does insulating the Board's project designations from the Secretary of Energy's policy priorities provide for a coordinated national energy policy?

How does a Board invested by us with such broad authority serve this country's best energy interests by exempting Board members from the conflict of interest requirements we subject lesser Federal officials to?

Mr. President, I submit these provisions do not serve our best national interests, and that is why I support the Ribicoff-Muskie substitute now before us.

Mr. President, to the extent we seek to achieve our national energy goals by violating other fundamental American principles, we jeopardize both objectives.

Yes, the times call for aggressive energy action now. However, let us not misconstrue speed for haste.

Mr. President, 6 years ago when the Senate voted on the trans-Alaskan pipeline I was 1 of only 5 who opposed final passage of S. 1081 authorizing the project. At that time I stated that it was quite clear to me "that little, if any, Alaskan oil would find its way directly to the east coast of the United States." I am sorry to say my prognosis was correct. The Alaskan oil pipeline takes precious American crude oil to where we have a crude surplus, while we on the east coast continue to import increasing volumes of foreign oil.

Mr. President, the Alaskan oil pipeline was a decision taken in haste. We responded to a genuine need with a hasty solution. And now do not have the full advantage which a more deliberate decision on the proper pipeline route would have yielded.

Mr. President, we have lost sight of other important goals in consideration of S. 1308. How does the preemption of State and local government decisions on local issues like land-use planning or zoning insure wise decisions?

By empowering the Board to take over Federal, State, and local agency functions, S. 1308 would, in fact, cause delays. The agencies the Board would displace have specialized expertise and experienced staffs. If the Board were to assume the decisionmaking role for

which it is empowered, it would require an enormous staff to process decisions taken over from a variety of Federal, State, and local agencies involving expertise from land-use planning to toxic waste disposal.

Furthermore, by providing the Board authority to decide for agencies that have not met the Board's timetable for action we may, in fact, be encouraging delay. Developers seeking a more favorable forum for decisions could frustrate local consideration of a project until the Board would step in because of missed deadlines.

Mr. President, I do not believe the creation of another Federal bureaucracy usurping local authority with a potentially insatiable appetite will help cut through redtape. In fact, I believe S. 1308 will actually encourage further delays on critical energy projects.

However, the substitute bill which I support skillfully balances the authority and rights of State and local governments with the need for expedited energy project action.

Finally, Mr. President, we must not accept what the proponents of S. 1308 would have us believe is a benign grandfather clause permanently waiving the application of any Federal, State or local law or regulation after a project has begun.

The simple truth is that we have very little idea of the health and environmental risks associated with the development of new energy technologies—especially those which would be prime candidates for expedited approval by the Energy Mobilization Board.

S. 1308's grandfather clause might very well prevent a community from seeking to protect itself from yet unknown toxicities associated with new energy technologies. In fact, as Senator MUSKIE, the distinguished chairman of the Senate Subcommittee on Environmental Pollution, has pointed out, new environmental laws or regulations are often enacted "as specific remedial responses to problems which were unknown or unknowable at the time a project was initially approved." How can we seriously consider waiving our right to protect the public health under any set of circumstances?

Mr. President, we must secure the energy future of this country, we must prepare to do that now. The decisions required of us will not be easy ones. Nevertheless, let us not confuse bad decisions with the right decisions simply because they hurt.

I submit to my colleagues, Mr. President, that S. 1308 embodies a series of unwise decisions taken in haste, representing an unbridled commitment to energy development—regardless of the consequences. I believe the substitute Ribicoff-Muskie amendment, of which I am a cosponsor, is a much more reasonable piece of legislation. This amendment balances our urgent need for additional domestic energy supplies with what should be our overriding concern to protect the public health.

Mr. President, the decisions we take here today will seriously impact on the lives of generations of Americans for years to come. What will we have gained if in the process of trying to secure our energy future, we irreparably damage our environment—the life support system on which we all depend?

I urge my colleagues to support the Ribicoff-Muskie amendment to S. 1308.

Mr. BAUCUS. Mr. President, I rise to speak against the motion to table the Muskie substitute.

Mr. President, there is little doubt that the United States faces an energy crisis, or that the decisions we make this week, and in the months ahead, will determine to a considerable extent how energy independent this Nation is going to be.

The legislation being considered today is just the first of several energy bills the Senate will act on, but the issues raised in this bill go to the heart of the relationship between the Federal Government and the States that was envisioned by our Founding Fathers.

The sponsors of S. 1308 state that the proposed Energy Mobilization Board is an effort to cut redtape in the permit process for siting energy-producing facilities, particularly the synthetic fuel plants that play such a critical part in the administration's latest energy plan.

Modifications of Federal and State permitting processes are long overdue. Unnecessary delays—especially at the Federal level—have held up siting decisions and burdened investors with expensive delays.

Proper steps to end duplication in the regulatory process are long overdue. Too much money is being spent just filling out forms and conducting studies to meet the requirements of a multiplicity of agencies. One form or one process conceivably could fulfill all the essential Federal, State, and local requirements.

But, is the creation of the kind of Energy Mobilization Board proposed by S. 1308 the best way to accomplish these goals? I think not.

No matter how great the need to streamline permit review processes, the question remains: What happens to State and Federal laws that may conflict with the wishes of members of the Energy Mobilization Board.

Will the right of Montanans, and the laws enacted by the Montana State Legislature, be protected and respected or will they be trampled upon by this Board?

Simply stated, to what extent would an EMB decision to shorten the amount of time in which a State agency could make a decision affect the outcome of that decision?

The Senate Energy Committee and the administration argue that the EMB would have the authority to alter only "procedural" law. They say the "substance" of applicable law would remain in effect.

But nowhere in S. 1308 is there an adequate distinction between "procedure" and "substance." Instead there are ambiguities in the Energy Committee's report expressing the committee's intent to "alter institutional mechanisms for making decisions" while on the other hand Federal and State agencies are told that this "subsection is not intended * * * to give the Board any additional authority."

I believe the answer to these questions and to the ambiguity in the committee report is obvious. A decision by the Board to shorten the time a State agency has to make a decision will affect the substance of the law. Procedures do affect substance.

For example, the Montana State Department of Natural Resources staff tell me that telescoping the timeline for a decision would gravely interfere with their ability to carry out the law requiring selection of the best, least vulnerable sites for facility development.

They say abbreviating the amount of time could mean not being able to gather and analyze even the most elementary baseline data.

Speeding up very complex processes could mean that the wrong decision is made, that an alternative is selected based on the wrong study assumptions, that a potentially dangerous facility is approved posing health and safety dangers in the future.

The committee's affirmation of a tough grandfather clause further limits the State agency's ability to develop the information that might uncover the potential for health and safety hazards.

S. 1308 is disturbingly indecisive about water allocation rights for energy development. The committee bill states that Federal water rights would not be expanded nor would existing rights be relinquished in any way. That is well and good. But nothing in the bill specifically states that water use requirements for development of federally fast-tracked, or any other federally backed energy project, must be determined pursuant to State law. The question is left glaringly unanswered.

Anthony Lewis expressed the fears of many Montanans in a recent New York Times column when he wrote:

> If a coal liquefaction plant were to be built in Montana requiring immense quantities of water, would the people of Montana and nearby states be content to have the crucial and complicated issues of Western water decided by Washington lawyers?

The projections for how much water is needed for synthetic fuels plants shows how complicated and murky this question becomes. One plant is projected to require nearly 300,000 acre-feet, at 325,900 gallons per acre-foot, per year. This is enough water to irrigate nearly 100,000 acres and support over 300 farm families.

So far there seems to have been very little effective planning about the relation of water use for energy development to all other water uses in the West.

Montana contains much of the West's remaining free-flowing surface water, and its appropriation among all uses must be determined with the greatest care.

Third, Mr. President, I am concerned about the judicial review portions of S. 1308.

The right to appeal decisions made by Congress or the executive branch is es-

sential to our form of government. Congress must weigh very carefully the precedents set when we disrupt the process.

S. 1308 centers all court review in the Temporary Emergency Court of Appeals (TECA) sidestepping the Federal District and trial courts, as well as the entire State court system.

In my view that is a grave mistake.

Finally, let me state that our system of government was built on the existence of a healthy tension between State and Federal interests. The system is built upon the premise that those interests can be worked out in a responsible manner.

We must think very carefully before we give the Federal Government the power to reduce that tension and give the Federal Government the upper hand.

The spirit in which we must proceed is one of cooperation between State and Federal Government. The Energy Mobilization Board in its present form sends a message to States that the Federal Government must have the primary role in determining what energy development does and does not take place in the individual States. That is not a model of decisionmaking that is in keeping with the spirit of the Constitution.

Montanans as much as any other citizens in this country are fed up with prolonged litigation and prolonged decisionmaking by Government. But Montanans want to know their traditional means of access to the decisionmaking process will not be dried up. Montanans want to know that if they have legitimate grievances with where energy projects are located or grievances with respect to other aspects of energy development that they can use their own State courts or the Federal courts to address those grievances.

S. 1308 as reported by the Energy Committee is just not acceptable in view of these concerns. The Muskie-Ribicoff legislation although not perfect goes a long way to correcting these faults. In my view it would be a serious mistake to table the substitute.

Mr. STENNIS. Mr. President, I am pleased to support the establishment of an organization that is necessary for the achievement of energy independence.

The urgency of obtaining the capability to control our Nation's energy and economic destiny is now abundantly clear to the Members of this body and to the citizens of our great country. Rampant inflation, unemployment, a weakened dollar, and a slowdown in economic growth are oil price shock waves which are being felt by all Americans. I believe it is now commonly understood that these economic pressures will persist as long as our Nation is dependent on foreign sources for its supply of energy. I further believe that the people of the United States expect leadership from this 96th Congress.

It has been recognized by three Presidents that we must achieve energy independence if we as a Nation are to continue to prosper and enjoy the fruits of our land. Recent petroleum price increases and political upheavals and instabilities in major oil exporting countries reminded us that we must get on with achieving national energy self-sufficiency. Establishment of an energy authority which is empowered to mobilize our industry toward the construction of high priority nonnuclear energy development projects is a first and vital step toward recognizing the urgency of the energy situation. The authority of the organization created by this act to eliminate when necessary Federal, State, and local procedural slowdowns, and to set deadlines for completion of reviews for the siting, design, and construction of energy facilities is essential to the proper execution of high priority energy projects. The authority to waive procedural law and set priorities is now a necessity to meet the demands for the energy we must have.

This act recognizes the importance of energy to our society and the need to cut the redtape and to proceed with developing our own sources of energy supply. I strongly urge passage of the Priority Energy Project Act of 1979. Experience will doubtless prove the necessity of further amendments to present law. We must make up our minds now to adopt whatever patterns of change that may prove necessary to meet our energy needs of the future.

The immediate amendment would strip the bill of the necessary authority to make essential changes and programs to meet our situation. I hope the amendment will be defeated.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table UP amendment No. 488 of the Senator from Connecticut (Mr. RIBICOFF). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New York (Mr. MOYNIHAN) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HEINZ) is absent on official business.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. HEINZ) would vote "nay."

The VICE PRESIDENT. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 329 Leg.]

YEAS—58

Bellmon	Ford	Pell
Bentsen	Hatfield	Pryor
Boren	Hayakawa	Randolph
Boschwitz	Heflin	Sasser
Bradley	Hollings	Schweiker
Bumpers	Huddleston	Simpson
Burdick	Inouye	Stennis
Byrd, Harry F., Jr.	Jackson	Stevens
	Jepsen	Stevenson
Byrd, Robert C.	Johnston	Stewart
Cannon	Laxalt	Stone
Chiles	Long	Talmadge
Church	Lugar	Thurmond
Cochran	Magnuson	Tower
Danforth	Matsunaga	Tsongas
DeConcini	McClure	Wallop
Domenici	Melcher	Warner
Durkin	Metzenbaum	Young
Eagleton	Morgan	Zorinsky
Exon	Nunn	

NAYS—39

Armstrong	Gravel	Nelson
Baker	Hart	Packwood
Baucus	Hatch	Percy
Bayh	Helms	Pressler
Biden	Humphrey	Proxmire
Chafee	Javits	Ribicoff
Cohen	Kassebaum	Riegle
Cranston	Kennedy	Roth
Culver	Leahy	Sarbanes
Dole	Levin	Schmitt
Durenberger	Mathias	Stafford
Garn	McGovern	Weicker
Glenn	Muskie	Williams

NOT VOTING—3

Goldwater	Heinz	Moynihan

So the motion to lay on the table amendment No. 488 was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Miss Lynn Wanlund, of my staff, be accorded the privilege of the floor during debate and voting on the pending legislation.

The VICE PRESIDENT. Without objection, it is so ordered.

UP AMENDMENT NO. 592

Mr. HUDDLESTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) for himself and Mr. RANDOLPH, Mr. FORD, Mr. WARNER, Mr. YOUNG, and Mr. BAYH proposes an unprinted amendment numbered 592.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. . The Board shall designate any utility, which applies for such designation, as a priority energy project if such project involves the conversion of a facility from the use of oil or natural gas to another type of fuel, or the construction of a new facility which would replace an existing oil or gas fired facility.

Mr. HUDDLESTON. Mr. President, this amendment is submitted on behalf of myself, Senators RANDOLPH, FORD, WARNER, YOUNG, and BAYH.

The PRESIDING OFFICER (Mr. BURDICK). The Senate will be in order.

Mr. HUDDLESTON. I thank the Chair.

This amendment would automatically grant fast track status to any utility which applies for it in order to convert from oil or natural gas to coal or coal-fired derivatives.

This amendment goes to the very fundamental question of whether or not we are serious about converting to coal.

We have certainly been saying that we are serious about reducing the amount of oil that we are using, particularly foreign oil. We have been talking about conversions for years. Three Presidents have said that coal is the key to our

short-term problems. We in Congress have passed two major conversion bills—the Economic Security and Environmental Coordination Act (ESECA) and the Fuel Use Act.

But the fact is the conversions just are not taking place.

They are not happening for two very basic reasons:

They are not happening for economic reasons, though the economics are turning around in their favor now.

And, they are not happening for the simple and understandable reason that utilities do not want to spend years in a regulatory maze. It is not worth the time, the effort, or the expense. In short, it is not worth the hassle.

Mr. President, Government should not be throwing up roadblocks to conversions. Government should be doing everything possible to encourage conversions and accomplish them as quickly as possible.

Any individual conversion may not offer the kind of savings that would appeal to the Energy Mobilization Board if we force them to take these conversion projects on a case-by-case basis. But, in the aggregate, conversion projects are well worth the Board's time and attention.

Preliminary estimates, compiled by ICF, Inc., for the President's Commission on Coal, indicate that the reconversion of coal capable utility plants could save as much as 724,000 barrels of oil per day—most of it by 1985.

Replacing oil- and gas-fired utility boilers with new coal units could yield additional savings of over half a million barrels of oil per day by 1985 and 1 million barrels per day by 1990.

No other energy path we could choose to take can offer this kind of savings this quickly.

The goal of the Energy Mobilization Board is to cut through any redtape and obstacles which impede the construction and operation of energy projects which could help us end this dangerous and expensive dependence on foreign oil. The amendment we are offering now does not in any way affect the powers and authorities which the Board may ultimately have at their disposal to accomplish their task.

It merely says that whatever authority the Board does have must be used to assist any utility which seeks help in converting from oil and gas to coal or coal derivatives.

This commitment to coal conversion is in keeping with the stated commitment of every administration since the Arab oil embargo.

It is in keeping with the congressional commitment to coal conversion evidenced by ESECA and the Fuel Use Act.

It will give some meaning to those commitments—meaning that those commitments do not now have.

Almost 6 years after the Arab oil embargo, can there be any question that business as usual is not going to get the job done?

Business as usual has resulted in thousands of unemployed coal miners and tons of coal lying on the ground or going unmined.

It is inexplicable to me that we are not burning every ton of coal we can get our hands on. I need only to drive through the coalfields of eastern and western Kentucky, I need only see the idle coal producing capacity, to know that a lot of our energy problems are self-imposed.

We just simply have to get serious about coal conversions, and this amendment is just a small start in that direction.

Mr. STAFFORD. Mr. President, will the distinguished Senator yield for a question?

Mr. HUDDLESTON. I will yield to the Senator from Vermont.

Mr. STAFFORD. I thank the Senator. I am much in sympathy with our converting from oil to coal in this country wherever it can appropriately be done. But I would like to ask the Senator if we convert to coal does he contemplate that that coal would be domestically produced or could coal produced, say, in Australia or Poland be used as a substitute for American coal?

Mr. HUDDLESTON. I would certainly hope it would be domestically produced, and it will be domestically produced unless through Government action and Government regulation we force domestic production out of the market. That is being done to some extent right now, and that is one of the things we need to be concerned about.

I want to emphasize again that this amendment does not address the myriad of problems we have in coal production and utilization in the country. It does not change the authority that the Energy Mobilization Board will have when this legislation is completed here and is finally enacted into law, if, indeed, it is. It just simply makes it automatic that when a project is for the purpose of converting from oil or natural gas, the fuel supply that is in such short supply at the present time, to coal, the one source of energy that is in abundant supply, then it would automatically be given the attention of the Board, it will be on the fast track basis.

Mr. STAFFORD. I appreciate the Senator's answer. I assume from what he has said it is the intention of the sponsors that American coal will be the coal to which the generating facilities might be switched.

Mr. HUDDLESTON. Absolutely. This amendment would help make sure that American coal would have a better shot at it.

Mr. STAFFORD. I thank the Senator from Kentucky.

Mr. HUDDLESTON. I yield at this time to the distinguished Senator from Indiana.

Mr. BAYH. Mr. President, I consider it a privilege to join with my good friend and neighbor across the Ohio River, the Senator from Kentucky. It has been a privilege to have had a chance to work with him and the distinguished Senator from West Virginia (Mr. RANDOLPH) as a member of the Coal Caucus which, basically, was formed to try to prick the Nation's consciousness about the tremendous opportunity available to us to develop coal, our most abundant domestic energy source.

We have heard a good deal of discussion about the energy crisis. The fact is we do not have an energy shortage, we have a liquid energy shortage. We have close to 300 or more years worth of coal. The question is how we use coal to substitute for oil. In my State of Indiana we rely heavily on coal for electric generation and other uses, and we know what an important resource coal is. Other States lack such experience.

So there has been an effort on the part of some of us, who have banded together from States that produce significant amounts of coal, to try to get the Nation on the track necessary to utilize this vast and valuable resource.

It has been almost unbelievable to the Senator from Indiana as I have reviewed decisions made by Federal agencies that work directly at cross-purposes with the President's stated goal of doubling our coal production and consumption by 1985.

One of the major catalysts for putting together the Coal Caucus was a tentative set of regulations proposed by EPA. These new regulations were not advanced as necessary to protect the public health. Technology was not available to enable coal users to comply with the regulations which were proposed. Finally, the impact of these regulations, for which there was no technology and no public health need, would have been to shut down all the soft coal fields of Illinois, Indiana, Ohio, and much of West Virginia.

But I must say, Mr. President, that the folks down at EPA, after a visit by some of us to the White House, and in discussion with others, did withdraw those proposed regulations and modify them significantly.

The strip mining bill which passed, and which the Senator from Indiana supported in 1977, because I do not think as we move out and develop coal resources we can just rape the land—and that is a sad chapter in our history—was an effort to try to return stripped land to a useful and productive condition so it could remain an asset to communities in coal mining areas. But the implementation of this statute has been inexcusable.

There was delay by the Office of Surface Mining in promulgating the regulations.

When the regulations were promulgated, they appeared to go far beyond the statutory intent of Congress. So, just recently, the Senate passed the Rockefeller amendment which said, "Wait a minute, State plans must only comply with the intent of Congress and not the intent of people writing reams and reams of regulations which far exceed the intent of Congress." Further, we extended the deadline for submitting State plans, to assure that enforcement would take place at the State level, as Congress intended, and that rational plans could be developed.

So I think we have already made some progress in trying to stimulate the production and use of coal.

But, as I view the amendment of my good friend from Kentucky, basically what he is trying to do is to put some teeth in the laws that have already been

passed by Congress, one in 1973 and one in 1978, when we were first hit by the energy crisis, at the time of the Yom Kippur war. We passed a coal conversion bill at that time, and the administration seemed to recognize the need to move from oil and gas to coal as quickly as we could. But that legislation was never implemented. No facilities were ordered to convert to coal. This was a great disappointment to coal mining operators—many of them small businessmen—and coal miners, with families to support, and many of us who believe coal is an important natural resource. So the Congress came back and passed another coal conversion bill last year.

But almost before the President had signed the bill, Secretary Schlesinger was sitting in my office, and the offices of other Members, saying that we were not going to convert to coal because we had a bubble of natural gas. Mr. President, I believe that bubble is going to burst in a couple of years. But this switch in positions, and uncertainty about EPA policy, was enough to stop most fiscally responsible corporate managers from making corporate decisions involving large capital outlays and long lead times. So there was a continuation of burning oil in boilers, or, in some cases, natural gas, when we should have been turning to coal. Oil is just too valuable and scarce a fuel to be wasting in boilers.

So, I just want to say that this amendment proposed by the Senator from Kentucky is absolutely on target. It would automatically extend fast track treatment to facilities converting to coal. He has already mentioned the amount of oil that could be saved if all possible conversions took place, and I would just like to underscore them for the Senate's consideration. The President's Coal Commission estimated that there are some 60 oil-burning facilities that could be switched in a relatively short period of time. The Congress endorsed that policy some time ago, yet there has not been one single conversion, despite the fact that we first passed legislation in 1973. In the last few months one initial immersion order has been issued, I believe, for conversion of a utility in the New York metropolitan area. And if it happens, it is going to save those consumers a lot of money, and perhaps assure them should we have another cutoff.

Mr. RANDOLPH. Mr. President, will my colleague yield again? In 1973, and in 1978, in both years we acted on coal conversion legislation.

Mr. BAYH. Neither of which has been passed.

Mr. RANDOLPH. Neither has been effectively implemented downtown.

Mr. BAYH. That is correct.

Mr. President, in a relatively short period of time, it is possible to convert a large number of major facilities from oil to gas or to coal. The amendment we are offering today would make sure this is done with a minimum of regulatory delay. We can save hundreds of thousands of barrels of oil a day, make the United States less dependent on imported energy, and decrease the stranglehold foreigners have on our energy supply.

Mr. President, I would hope that Senators will see that this amendment will assist the President's energy program, rather than hinder it. I am pleased to join with Senators HUDDLESTON, RANDOLPH, FORD, WARNER, and YOUNG in the hope that we will be successful in moving coal out there to the marketplace, and into the Nation's boilers, and in reducing our use of oil.

Mr. ROBERT C. BYRD. Mr. President, does the Senator from West Virginia, Senator RANDOLPH, have control of the time? I simply want to add my name as a cosponsor.

The PRESIDING OFFICER (Mr. CHILES). Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON addressed the Chair.

Mr. RANDOLPH. The Senator had yielded to me. If I can accommodate my colleague, I would want to do that.

Mr. JOHNSTON. Surely. I just thought I could say a word to which the Senator could respond.

Mr. RANDOLPH. That would be agreeable.

Mr. JOHNSTON. Mr. President, we very much agree that development of coal is one of the highest priorities in terms of our Nation's energy. Converting to coal, which is domestic, as an alternative for imported oil, there can be no higher priority than that.

We would suppose, Mr. President, that the Board, in the exercise of their discretion, will grant priority energy project status to the great majority, perhaps all, of this kind of projects. But, Mr. President, the reason that we did not designate coal conversion facilities, the reason that we did not designate synfuel facilities, the reason that we did not designate anything, was because when you start designating different projects, pretty soon you are getting them all included—all synfuel, all pipelines, all strategic oil reserves, all refineries.

Mr. RANDOLPH. Will the Senator yield to me at this point?

Mr. JOHNSTON. Yes.

Mr. RANDOLPH. The production of synfuels is not tomorrow, it is not next year nor the next. But the conversion of coal is now. There is a difference, I say, in relationship to the other alternatives of which the Senator speaks.

Mr. JOHNSTON. I find myself in a very difficult position, because I agree with almost everything that the proponents of this amendment say, except that we do not want to accept this as part of the definition. We would rather leave that to discretion, because it may be unnecessary. We may have cooperative States and Federal agencies that do not hang up the process at all, and it may take more time, effort, and redtape to go through the Energy Mobilization Board than to proceed down the track of current law.

I would imagine, for example, the State of West Virginia would be very accommodating to this kind of project. So, Mr. President, that is my concern, and I wish the distinguished Senator from West Virginia would respond to that concern.

Mr. RANDOLPH. Mr. President, I support as a principal sponsor, a member of this team with Senator HUDDLESTON and others, this amendment. I am also glad the majority leader has become one of its sponsors. I only wish that the Senator from Louisiana (Mr. JOHNSTON) could be a sponsor.

What would this amendment do if it were accepted and becomes law? We would automatically grant priority fast track status to any utility which converts from oil or natural gas to coal. What is wrong with that? The cheapest alternative now—not 5 years from now—to imported oil and the way to achieve a significant reduction of imported oil is the direct use of clean burning coal. This option would have a high payoff value. It will reduce oil consumption immediately compared with the 10 to 15 years necessary for developing other alternatives being considered by the Congress. Those other alternatives are very important—I support them. Synthetic fuels, for example, are a critical ingredient to our domestic energy future.

Mr. President, we have not had the significant increase in direct coal utilization. Yet the statutes have been upon the books since 1974 and 1978. We now hope that by having these projects designated as fast track, for expedited treatment by the EMB, existing coal capable utilities and replacements for existing oil and gas-fired units will be able to proceed immediately to convert to coal.

Why have we not had a significant increase to date in direct coal utilization? Michael S. Koleda, Executive Director of the President's Commission on Coal, asked this and other related questions in an address to the fourth annual Governors' Conference 2 weeks ago. Mr. Koleda asked, why do we continue to burn precious oil and gas under stationary boilers when oil imports are disrupting our economy and causes inflation? Why do we continue to burn precious oil and gas under stationary boilers when oil dependence threatens our Nation's security? Why do we continue to burn precious oil and gas amid a glut of readily available coal and thousands of unemployed miners? When coal costs one-third to one-half—I hope my colleagues read and understand this clearly—when coal costs one-third to one-half the cost of oil, why do electric utilities continue their dependence on costly imported oil at a rate of millions of barrels per day?

Mr. President, one of the reasons for the under utilization of coal is that many people in areas where conversion of utility boilers could occur, think back to when coal was in widespread use as a utility boiler fuel. They remember what that meant for the quality of the air. I do not believe they realize that today, with our new source performance standards and advanced cleanup technologies, a new coal-fired plant is cleaner than most oil-fired plants that are in operation today. This is proved; this is factual; this is known.

Utilities themselves also have reservations. They are fearful that many groups will try to abort attempts to build new coal-fired plants and will resist pro-

grams encouraging coal conversion. They fear that unchecked rail rate increases will wipe out the current cost advantage coal currently enjoys over oil.

Environmentalists, although not the entire community, are often too quick to identify the negative environmental aspects of the coal option.

Most of the environmentalists I work closely with in my capacity as chairman of the Environment and Public Works Committee realize that beyond solar and conservation, direct burning of coal is the option we can best control from an environmental standpoint. I feel that the environmental community should show significant support for clean burning of coal in place of oil and gas in utility boilers.

Mr. President, one of the reasons for the underutilization of coal is that many people in areas where conversion of utility boilers could occur still focus back to a time when coal was in widespread use as a utility boiler fuel. They remember what that meant for the quality of the air. I do not believe they realize that today, with our new source performance standards and advanced cleanup technologies, a new coal-fired plant is cleaner than most existing oil-fired plants.

Utilities themselves also have reservations. They are fearful that many groups will try to abort attempts to build new coal-fired plants and generally will be against programs encouraging coal conversion. They fear that unchecked rail rate increases will wipe out the current cost advantage coal currently enjoys over oil.

Some environmentalists, although not the entire community, are often too quick to identify the negative environmental aspects of the coal option. I believe they should realize that beyond solar and conservation, direct burning of coal is the option we can best control. I feel that the environmental community should provide support for clean burning of coal in place of oil and gas in utility boilers because it is the best of a difficult set of remaining options which include synthetics, oil shale, and others.

Utilities should support clean burning of coal because their prime objective should be to provide electricity from the cheapest and most dependable source.

It is the best of a series of remaining options, which include, of course, synthetic fuels, oil shale, fuel from agricultural wastes and other forms of biomass.

Mr. President, utilities should be united in their support for clean burning of coal. Many are beginnng to do this. I place in the RECORD a list of utilities that have, without the actual mandate of the administration, gone to coal burning from oil and gas. This has taken place in several areas of our country: New England, Florida, and other places.

The list follows:

TABLE 1.—UTILITY POWERPLANTS PREVIOUSLY IDENTIFIED AS CAPABLE OF BURNING COAL THAT ARE NOW BURNING COAL

State and utility	Plant	Units	Megawatts
Alabama: Alabama Electric Coop	McWilliam	1-3	41
Colorado:			
City of Colorado Springs	Drake	5-7	264
Public Service of Colorado	Arapahoe	1-4	252
	Cameo	1, 2	75
	Cherokee	1-4	767
	Valmont	5	180
Central Telephone & Utility	Clark	1, 2	44
Delaware: Delmarva Power & Light	Delaware City	1-3	120
Florida:			
Florida Power Corp	Crystal River	1, 2	964
Gulf Power Co	Crist	4-7	1, 054
Tampa Electric	Gannon	5, 6	552
Georgia:			
Georgia Power	McDonough	1, 2	458
	Yates	1, 2	1, 394
Savannah Electric	Port Wentworth	1-4	333
Illinois:			
Central Illinois Public Service	Hutsonville	3, 4	150
Central Illinois Light	Wallace	3, 7	271
Commonwealth Edison	Crawford	7, 8	538
	Fisk	19, 20	495
	Joliet	6-8	1, 196
	Waukegan	6-8	774
Illinois Power Co	Hennepin	1, 2	310
City of Springfield	Lakeside	1-7	161
Illinois Power Co	Havana	6	450
	Woodriver	4, 5	503
Indiana:			
Northern Michigan Public Service	Michigan City	2, 3, 12	540
	Bailey	7, 8	590
	Mitchell	4-6, 11	472
Indianapolis Power & Light	Stout	5-7	651
	Pritchard	3-6	283
Commonwealth Edison (Indiana)	State Line	3, 4	536
Iowa:			
City of Ames	Ames	5-7	57
East Iowa Light & Power Coop	Fair	1, 2	63
Cedar Falls Utilities	Streeter	4-6, 47	67
Cornbelt Power Coop	Humboldt	1-4	45
	Wisdom	1	60
Iowa Electric Light & Power	Sutherland	1-3	158
Fairmont Public Utility	Fairmont	1-5	13
Interstate Power Co	Dubuque	2-4	82
	M. L. Kapp	1,2	237
Iowa Illinois Gas & Electric	Riverside	3-5	99
Iowa Power & Light	Council Bluffs	1-3	781
	Des Moines	6, 7	189
Iowa Public Service Co	Carroll	1, 2	11
	Eagle Grove	1	8
	George Neal	1-3	987
	Hawkeye	1, 2	20
	Maynard	7	57
Iowa State University	Iowa State	1, 2, 4, 5	24
City of Muscatine	Muscatine	5-8	125
Pella Municipal Power	Pella	6	26
University of Iowa	University of Iowa	1, 5, 6	21
Kansas:			
Kansas City Board of Public Utility	Kaw	1-3	171
	Quindaro	1, 2	218
Kansas Power & Light	Lawrence	4, 5	553
	Tecumseh	7, 8	229
Empire District Electric	Riverton	7, 8	91
Kentucky: Louisville Gas & Electric	Cane Run	1-6	983
	Paddy's Run	1-6	302
Maryland:			
Baltimore Gas & Electric	Wagner	3	359
Potomac Electric Power	Morgantown	1, 2	1, 148
	Chalkpoint	1, 2	788
Michigan:			
Consumers Power	Weadock	7, 8	326
	Karn	1, 2	550
Detroit Edison	St. Clair	1-4, 6, 7	1, 382
	River Rouge	2, 3	558
	Conners Creek	15, 16	300
	Trenton Channel	7, 8, 9A	778
	Pennsalt	11-18	39
Holland Bd. of Public Utility	DeYoung	1-5	77
Michigan State University	MSU No. 65	1-3	39
Minnesota:			
Austin Utilities	N. E. Station	1	32
Northern States Power	Minnesota Valley	3	46
	High Bridge	3-6	363
	Riverside	1, 2, 6-8	358
	Black Dog	1-4	488
	Redwing	1, 2	24
	Wilmarth	1, 2	26
Minnesota Power & Light			
	Aurora	1, 2	116
	Clay Boswell	1-3	515
Hibbing Public Utilities	Hibbing	1, 3	15
New Ulm Public Utilities	New Ulm	1-4	25
City of Rochester	North Broadway	1, 2	13
	Silver Lake	1-4	99
United Power Association	Elk River	1-3	47
Mississippi: Mississippi Power	Daniel/Jackson Cnt	1	500
Missouri:			
Kansas City Power & Light	Hawthorne	1-5	969
	Grand Avenue	5, 7-9	94
Missouri Public Service	Green	1, 2	44
City of Independence	Blue Valley	1-3	102
Union Electric	Meramec	1-4	880
Marshall Municipal	Marshall	4, 5	23
St. Joseph Power & Light	Lake Rd	2, 4	124
Montana: Montana Power	Lewis & Clark	1	50
Nebraska:			
City of Fremont	Fremont 2	6-8	135
Nebraska Public Power District	Sheldon	1, 2	216
	Kramer	1-3	114
Omaha Public Power	North Omaha	1-5	646
Nevada:			
Nevada Power	Reid Gardner	1-3	330
Southern California Edison	Mohave	1, 2	1, 608
New Jersey:			
Atlantic City Electric	BL England	1, 2	299
Public Service Electric	Mercer	1, 2	606
New Mexico: Public Service of New Mexico	San Juan	1, 2	656
New York: Rochester Gas & Electric	Rochester	3	80
North Carolina: Carolina Power & Light	Sutton	1-3	588
North Dakota:			
Minnokta Power Coop	Wood	1-3	22
	Young	1, 2	648
Montana Dakota Utilities	Heskett	1, 2	100
Ohio:			
Cincinnati Power & Light	Miami Fort	5-8	1, 254
Dayton Power & Light	Tait	4, 5	278
Painesville Municipal Lightings	Painesville	1-6	60
Piqua Municipal	Piqua	4-7	39
City of Hamilton	Hamilton	3, 8, 9	80
St. Marys Municipal	St. Marys	4-6	19
Ohio Edison	Toronto	5-7	172
Ohio Power Co	Cardinal	1-3	1, 800
Oklahoma: Oklahoma Gas & Electric	Muskogee	4, 5	1, 030
Pennsylvania:			
GPU-Pennsylvania Power	Seward	2-5	243
Phildelphia Electric	Cromby	1	150
	Richmond	2	108

TABLE 1.—UTILITY POWERPLANTS PREVIOUSLY IDENTIFIED AS CAPABLE OF BURNING COAL THAT ARE NOW BURNING COAL—Continued

State and utility	Plant	Units	Megawatts
South Carolina:			
S. Carolina Power & Light	Robinson	1	174
South Carolina Electric & Gas	Canadys	1–3	422
	McMeekin	1, 2	252
	Urquhart	1–3	250
South Carolina Public Service	Jefferies	3, 4	300
South Dakota:			
Black Hills Power & Light	French	1	26
Northwestern Public Service	Aberdeen	3	8
	Mitchell	3	9
Tennessee: Tennessee Valley Authority	Allen	1–3	879
Texas: San Antonio Public Service	Deely	1, 2	836
Utah: Utah Power & Light	Gadsby	1–3	252
	Hale	1, 2	60
Vermont: Burlington Electric	Morgan	1–3[1]	30
Virginia:			
Virginia Electric & Power	Chesterfield	5, 6	991
Danville Water, Gas & Electric	Branlty	1–3	31
Appalachian Power	Glenlyn	5, 6	335
Wisconsin:			
Wisconsin Public Service	Pulliam	3–8	380
	Weston	1, 2	148
Wisconsin Electric Power	North Oak Creek	1–4	442
	South Oak Creek	5–8	1,034
Marshfield Electric & Water	Wildwood	4, 5	32
Lake Superior District	Bayilont	1–6	84
Total			49,648

[1] Also burning wood.

Mr. RANDOLPH. So we feel that the utilities cannot be reluctant in converting to coal. They should support the clean burning of coal, because the utilities' prime objective, Mr. President, should be to provide electricity from the cheapest and the most dependable source. Clean burning of coal must be supported, by everyone who studies this question, because a ton of coal mined and burned means an increase in jobs and coal sold. The resource provides the economic base to the mining sections of this country, to the operators, and to the miners who work beneath the earth in deep mines and work on the earth in surface mining. Our Nation as a whole responds to this sort of program.

Mr. President, in a letter of September 25, which I sent to my colleagues of the Coal Caucus, individually the savings from any one conversion of a utility or major fuel burning installation may seem too small to the Energy Mobilization Board to merit their assistance. In the aggregate, however, the savings from conversions would be substantial and offer one of the very best possibilities for short-term relief from excessive oil imports. Preliminary estimates compiled by ICF, Inc., for the Coal Commission, of which I am a member, indicate that the reconversion of coal-capable utility plants, just these utility plants alone, could save as much—this is not in dispute—as 724,000 barrels of oil per day. I hope that Members of the Senate, with the opportunity they will be provided to vote for this amendment, will realize that that staggering sum, and significance of this figure.

Of course, Senator HUDDLESTON and those of us who speak for this amendment know that the direct burning of coal will free up to 2.5 million barrels of imported oil per day. This will more than satisfy the criteria for designation that, frankly, Senators MUSKIE and RIBICOFF believe should be required in making Energy Mobilization Board decisions. By placing these projects on the fast-track system, we shall be able to combat institutional obstacles that have developed in regard to direct burning of coal.

Mr. President, if we speak earnestly on this subject, it is understandable. Anyone who believes in the conversion from oil and natural gas to coal should speak earnestly, because our case is right and our mission clear. The time is now and the need can be met, at least to a substantial degree, by the passage of the amendment now pending.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. I assume there is no time limit on the amendment; therefore, no time in opposition.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I only want to yield myself 5 minutes so that, when 5 minutes are up, I want to know that.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMENICI. Mr. President, let me say to my good friend, the chairman of the Committee on Environment and Public Works (Mr. RANDOLPH), as I have said on the floor within the last 48 hours, there is no one who has sounded the alarm to the United States, to its leaders, on the need for getting on with using alternate fuels for as long as he and as well as he has. There is no one. He is absolutely right in the substance of his argument here today that, in the time analysis, we can talk about all the different alternates, but for the very short term, there is an excess of coal, there is an abundance of coal-producing capacity, regardless of what some people think. There is an excess of inventory of coal all around. In fact, it is so strange, it is looked at from afar in an almost incredulous manner that, in this time of crisis, we are having miners laid off from work; that we search so hard for alternate fuels when we have such a good one in coal.

I have no difficulty with the priority the Senator attempts to place on coal utilization, coal conversions contained in the Huddleston amendment. For the time being, however, I want to say that I am not prepared to accept the amendment at this point. I want to discuss it a little more. I want to try to understand its impact on the overall philosophy of the bill and the policy and direction that we are going to take.

I hope those who are sponsors of it, all of whom, from what I can tell, have been diligently attempting to get some of our energy projects expedited—I note that the sponsors are the kind of people who want to get on with that. I commend them for it and certainly, from the Energy Committee standpoint, appreciate the support.

So, I say to the Senator from Virginia and to my good friend, the Senator from Kentucky, that I prefer that we wait just a while while we discuss it further. I must be absent for about 15 minutes and I ask that we not proceed with it until I return. The chairman will be back shortly and he asked the same. I ask that in his behalf at this point.

Mr. HUDDLESTON. Will the Senator allow me to make just a couple of points before he leaves, because I hope he will take them into account in the next few minutes?

First of all, the question is asked, and I think very validly, as to why this particular type of project ought to receive any special attention and whether or not, by requiring that conversion from oil and natural gas to coal or coal derivatives is any different from a number of other energy type projects that we all have interest in. Some Members have more interest in particular ones than others—the question of refineries, the question of synthetic fuels projects, and this type of activity. The reason, as I see it, and it is one of national interest at this particular point in time, is that the conversion from oil and natural gas to coal is virtually the only method we have right now—aside from conversion—of reducing the amount of foreign oil that we bring into this country.

It is the only way we can do it in the near term to any substantial degree.

When we take that fact and add to it the fact that the President of the United States has said that we will not import more foreign oil ever again than we did in 1977, at which time the import supply was 8.2 million barrels a day, we can see that we are on a collision course again in our oil supply.

While right now there are no gasoline lines at the service stations, certainly within a reasonable period of time, if demand continues at the rate it is now, we will be bumping against those import limitations.

One way to avoid that, in fact the only way, is to bring about greater utilization of coal and displace the direct use of oil. That is why I think this amendment is so important. It recognizes those conditions. It recognizes those facts. It makes it an automatic process for the Board to consider when there is proposed a conversion from oil or natural gas to coal.

It just makes sense. I am convinced that if there were lines in our gasoline stations, as there were a few months ago, that this amendment would receive unanimous consent.

I am convinced we would have a better Energy Mobilization Board come out of this Congress if the lines were still at the stations. But they are gone temporarily.

With the import limitations that are going to be imposed, there is no doubt that sooner or later, and probably sooner, they are going to reappear.

I think it is a recognition of those facts that makes this amendment appropriate at this time and sets these projects apart from long-term synthetic fuels projects, or projects such as refineries which do not in fact save any oil.

So I hope the Senator will take that into account in his deliberations.

Mr. DOMENICI. I will.

Mr. President, I appreciate the Senator's taking the time to express to me why he thinks this is a special kind of project, which is, obviously, the case he is making, not special to any part of this country, but rather, special in terms of the immediate problem and how we might address it.

Nonetheless, let me say that I would like to have a little bit of time to consider it in light of the fact that, to this point, it would be the only specific mandate, in a sense, to the Energy Mobilization Board in terms of a kind of project that they have to consider.

I think that is a very important decision for us to make here.

Mr. RANDOLPH. Did I understand that we are just waiting, or should there be a quorum call asked for?

I want to be certain of the situation.

Mr. DOMENICI. Mr. President, I talked with Senator JOHNSTON just before he left. He said that he would be back in 15 or 20 minutes, I think he will be back in a few minutes. It should not be over 10 minutes.

If Senators have further things to say, obviously, I would not want to suggest the absence of a quorum. But if he wants to just give up his time, does not have anything to say, I would suggest the absence of a quorum.

I did not want to shut out anybody.

Mr. RANDOLPH. I understand that Senator DOMENICI wishes to leave the floor. Is that correct?

Mr. DOMENICI. Yes. That is correct. I will not be long.

We are going to confer with Senator JACKSON. I want to confer with Senator HATFIELD for just a moment on the Senator's amendment. I would like to dispose of it.

Mr. RANDOLPH. I think that is better.

Mr. DOMENICI. So would it be appropriate to suggest the absence of a quorum?

Mr. HUDDLESTON. If the Senator will withhold on that, then we will suggest the absence of a quorum.

UP AMENDMENT NO. 592

Mr. HUDDLESTON. Mr. President, I send to the desk technical modifications of this amendment, and I move they be accepted at this time.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment (UP No. 592), as modified, is as follows:

On page 35, after line 2 insert the following:

"(d) The Board shall designate any fossil-fuel fired electric generating plant for which such designation is requested as a priority energy project if such project involves (1) the conversion of a facility from the use of oil or natural gas to coal or a coal-derived fuel, or (2) the construction of a new facility which would replace an existing oil or gas fired facility with coal or coal-derived fuel fired capacity."

Mr. DOMENICI. Mr. President, I suggest that absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I want to announce for the information of all Senators that we would like to make a determined effort to finish this bill this evening, hopefully even this afternoon, and we do invite all Senators who have amendments to bring them forward.

With respect to the Huddleston amendment, we are working on different ideas under that amendment, and I would hope we could suspend consideration of it for the time being. Hopefully we will be able to work it out to the satisfaction of the Senator from Kentucky, the Senator from West Virginia, and others, and we would like to get on with the process of considering any other amendments any other Senators have at this time, if we may, with the idea of finishing tonight.

The PRESIDING OFFICER. Without objection, the amendment will be temporarily set aside.

Mr. WARNER. Mr. President, will the Senator from Louisiana yield me a minute?

Mr. JOHNSTON. Yes, I yield the Senator 1 minute.

Mr. WARNER. I ask that the suspension of the Huddleston amendment await the conclusion of my remarks, since I am a cosponsor of that amendment.

Mr. JOHNSTON. Yes. Mr. President, I ask unanimous consent that the suspension of that amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I rise today in support of Senator HUDDLESTON's amendment which will designate any fossil fueled fired electric generating plant as a priority energy project, if requested, and if the facility will be converted to coal or a coal-derived fuel.

The President's Commission on Coal in its July 12 report to the President found that:

(G)rowing American reliance on imported oil threatens our security; constrains our foreign policy; and undermines our ability to manage the economy, to control our balance of payments, to keep the dollar sound worldwide, and to bring inflation under control at home.

The Commission also found that the recessionary effect of escalating world oil prices will severely hamper the country's attempts to balance its budgets.

The Commission declared:

Now is the time for government to act and to do so decisively. . . .

We recommend a program of actions involving both the direct use of coal and the creation of a synthetic fuels industry to decrease oil imports.

The Commission recommended that coal-capable electrical utility boilers now burning oil and gas should be reconverted to burn coal, and that oil and gas fired utility boilers not capable of burning coal should be replaced by new coalfired units.

In 1974 Congress passed the Energy Supply and Environmental Coordination Act of 1974, which created a Federal regulatory program aimed at replacing oil and gas with coal in the industrial sector. The act authorized the administration to prohibit existing "major fuel-burning installations" from burning oil or natural gas and to order new equipment to be designed to be capable of burning coal.

Similarly Congress enacted in 1978 the Powerplant and Industrial Fuel Use Act which gave the President the power to prohibit existing electric powerplants from using petroleum or natural gas and instead burning coal as a fuel.

But the performance under these two acts has been dismal. For many reasons, some of which have been regulatory delays, these provisions have not been effectively implemented.

Senator HUDDLESTON's amendment will complement these two acts and will allow powerplant conversions to be placed as priority projects.

I support Senator HUDDLESTON's amendment and have joined with him as a cosponsor.

Mr. President, there are no less than five plants in my State of Virginia that now in accordance with recently enacted legislation, have applications pending before appropriate Government agencies, principally EPA and DOE, requesting conversion from oil to coal. I do not criticize the Secretaries or the staff members of those agencies and departments, but I do say the applications have been pending now for many months. I am confident that this type of legislation can help reduce that period of time within which oil plants can be converted to coal plants.

Three different administrations have called for the increased usage of coal but to no avail.

In my own State of Virginia over 2,000 miners are out of work, mines are closing, families dependent upon the coal industry are being subjected to untold hardship and communities are in danger of economic demise because of this nations inability or unwillingness to increase its production of coal.

This amendment has the potential to create the demand for increasing the production of one of this Nation's most abundant resources—coal. This increased demand will help to alleviate the economic distress prevalent throughout much of this Nation's coalfields.

Just as important, Mr. President, this amendment when enforced will allow this Nation to cut back drastically on its usage of imported oil. It is estimated that by 1990 this amendment will reduce our dependency on foreign oil by 1.5 million barrels per day. At the current world oil

price this is a savings to the American public of $30 million per day.

Any measure which will put Americans back to work, reduce our dependence on foreign oil, increase our coal production, and reduce this country's inflationary spiral deserves to be supported by this body.

I urge my colleagues to join with me and vote for this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MELCHER). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I would like to echo the sentiments expressed by the Senator from Louisiana (Mr. JOHNSTON) and the managers of the bill on the other side of the aisle that if Senators have amendments, they should call them up. The Senate is wasting a lot of time at a very good point during the day. Debate could be going forward and votes occurring. The best part of the day, at the moment certainly, is apparently being wasted. There may be a good bit of work going on outside the Chamber on amendments, but I do not know whether there is or not. I just want to underwrite what the Senator said, that if Senators have amendments, let them call them up and let them be acted on.

Today is Wednesday, tomorrow is Thursday, the next day is Friday. We will be out on Saturday and Sunday, and we will be out on Monday, that being a holiday. I would like to complete this bill this week. Wednesday is a good day. At 1:45 in the afternoon is a good time of the day for getting the people's business done.

I will try to avoid putting on pressure for final passage for the moment, but I urge Senators to present their amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask at this time that the amendment of the distinguished Senator from Kentucky be set aside temporarily.

Mr. HUDDLESTON. Reserving the right to object, set aside for what period of time?

Mr. JOHNSTON. Until the Senator wants to bring it up.

Mr. HUDDLESTON. We need to have a conversation on it, so we should suggest the absence of a quorum.

Mr. JOHNSTON. Understanding, of course, any time, the Senator from Kentucky wants to bring it up, that he can, and we will not seek any time agreements or any unanimous consent that would cut off his right to do so.

I was going to have the committee substitute adopted so we can have that as a vehicle to amend.

Mr. HUDDLESTON. Reserving the right to object, the Senator does not anticipate any intervening amendments to mine at this particular point, other than the one he is suggesting?

Mr. JOHNSTON. I would like to go ahead and have the committee substitute adopted. Then, if the Senator wishes to bring up his amendment——

Mr. HUDDLESTON. No objection.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Kentucky will be laid aside temporarily.

Mr. JOHNSTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JOHNSTON. Have we adopted the committee substitute at this point?

The PRESIDING OFFICER. The committee substitute has not been adopted.

Mr. JOHNSTON. Mr. President, I would move for adoption of the committee substitute at this point.

The PRESIDING OFFICER. The Chair would advise the Senator that adoption of the committee substitute precludes any other further amendment.

Mr. JOHNSTON. That precludes any further amendment?

The PRESIDING OFFICER. If the Senator asks it be considered original text, it would still be open to further amendment.

Mr. JOHNSTON. Have we adopted the committee substitute for the purpose of considering it as original text for further amendment?

The PRESIDING OFFICER. Not at this time.

Mr. JOHNSTON. Then, Mr. President, I would move the committee substitute for the limited purpose of considering it as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, the committee substitute is agreed to as original text for the purpose of further amendment.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEVIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask that the amendment of the Senator from Kentucky now pending be temporarily withdrawn from consideration while we adopt some other amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UP AMENDMENT NO. 593

(Purpose: To exempt the transportation system authorized by the Alaska Natural Gas Transportation Act of 1976 from the jurisdiction of the Energy Mobilization Board)

Mr. STEVENS. Mr. President, is the bill now open to amendment?

The PRESIDING OFFICER. The bill is open to amendment.

Mr. STEVENS. I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 593:

On page 141, add the following new section following line 8:

"THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

"SEC. 37. No provision of this Act shall modify, alter, or repeal any portion of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719). This Act shall, however, apply to the Alaska Natural Gas Pipeline system to the extent that the provisions of this Act may be used to expedite the construction of such system."

Mr. STEVENS. Mr. President, I believe this is a straight-forward amendment. I have discussed it with the managers of the bill.

In the Alaska Natural Gas Pipeline Act which we passed, that became law on October 22, 1976, the Congress gave the President the authority to waive under certain circumstances provisions of Federal law.

It also provided a series of authorities to Federal officials to take actions that would expedite the construction of the Alaska gas transportation system. Included in that act is a judicial review section and supplemental enforcement authority.

We are very desirous, of course, of having that pipeline move ahead, and we are desirous of having—to the extent that the provisions of this act could be used to expedite the construction of that project—this act applies to that project. We would not want any court or agency to interpret the designation of the pipeline project under the Priority Energy Project Act to reduce, modify, alter, or amend in any way the authority given to the President and to the agencies and officers of the Federal Government to expedite the construction of that pipeline once it commences. That is the intent of this amendment.

Under this amendment, the Board still retains the authority, should application be made, to designate the Alaska natural gas pipeline system as a priority project. We who support this project would welcome any assistance provided under this act to expedite that project.

However, neither I nor anyone supporting this project would want some official to later say that such action, in and of itself, subjected the Alaska natural gas pipeline transportation system solely to the provisions of this act, as authority already exists to expedite the construction of the gas pipeline system, since it is in the interest of our Nation to complete it.

I point out to the Senate that this is a very complicated project. It involves a pipeline system that will go not only through portions of our own country but also through our neighbor to the north—Alaska's southern neighbor—Canada, and it involves the operation of a treaty which the Senate already has ratified.

Certainly, this is a best-of-both-worlds amendment.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. STEVENS. I yield.

Mr. JACKSON. Mr. President, this is potentially the largest construction project ever undertaken. It seems to me that the importance of it is obvious—the need for the natural gas is clear.

I think the amendment will be helpful, because it will provide the benefit of existing law plus whatever supplementary assistance can be obtained from the Energy Mobilization Board legislation.

Is that not the essence of the amendment?

Mr. STEVENS. That is the intent of the Senator from Alaska. I am grateful to the Senator from Washington for his understanding of my intent.

This project is estimated to cost $15 billion, and I think the time may come when only those projects that are designated as priority projects would receive assistance from, for example, the Energy Security Corporation. That could be of substantial assistance to the Alaska natural gas transportation system somewhere downstream. Right now, however, I would not want anyone to interpret this act—if passed and if designation of the gas pipeline project as a priority project occurred—as detracting from or reducing the authorities we have given to the President and the executive officers to expedite the pipeline.

Mr. JOHNSTON. Mr. President, the Senator from Alaska has stated accurately the scope of his amendment, which simply makes clear that this does not take away authority already given under the Alaska natural gas pipeline legislation. Therefore, on behalf of the majority of the committee, we accept the amendment.

Mr. STEVENS. Mr. President, I move to allow adoption of my amendment.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. STEVENS. I yield back the remainder of my time.

Mr. JOHNSTON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 594

(Purpose: To require the Energy Mobilization Board to enforce compliance with a decision schedule within 60 days)

Mr. BENTSEN. Mr. President, I call up my amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 594:

Add a new subsection "(c)" to section 21:

"(c) The Board shall act as provided for in subsections (a) or (b) within sixty (60) days following failure for any Federal, State, or local agency to comply with a Project Decision Schedule."

Mr. BENTSEN. Mr. President, this amendment is straightforward and is designed to reinforce the intent of S. 1308 that Federal, State, and local permitting agencies act expeditiously on priority applications.

The amendment gives the Energy Mobilization Board a maximum of 60 days in which to act to enforce compliance with a decision schedule.

Let me make clear that it does not require them to approve it. They can approve it or disapprove it, or they can decide to send it TECA, and TECA could decide whether or not those schedules are reasonable or should be changed.

Under the enforcement provisions of S. 1308, the Energy Mobilization Board is given two options to deal with permitting entities which will not meet decision schedule deadlines. It can either act in place of the dilatory agency—applying the relevant criterion—or it can institute court action to force compliance with the decision schedule.

It is my belief that such an impasse will occur rarely, if at all. It is unlikely that any capable agency head will set idly by and permit the EMB in Washington to make his decisions for him.

I am concerned, however, that the enforcement provision of S. 1308 will create a gray area of indecision for permitting agencies confronting a decision schedule deadline. As drafted, S. 1308 does not require the EMB to initiate enforcement action within a specific time period.

What I am trying to do is to finally close the circuit. The way it is now, if you are talking about starting a project, there is no certainty that at the end of 2 years you are going to have it or a decision. This amendment says that at the end of 2 years and 60 days, you get a decision up and down or it is sent to TECA to make a decision as to whether the schedules are appropriate or not.

It is important that EMB have flexibility in enforcing compliance with the decision schedule. It is simply more efficient and desirable for the permitting agency to act on priority applications, than for the EMB to do so.

But we do not want that flexibility to be unduly exploited. It is conceivable, for example, that a bargaining process of many months could occur involving the EMB and a major permitting agency—one where the EMB sits waiting for the agency to act, but with the agency refusing to do so, gambling that the EMB will not enforce the decision schedule.

The result would be exactly what we are seeking vigorously to avoid with S. 1308—dilatory decisionmaking by permitting and licensing entities.

I want to insure that each and every permitting agency knows we are serious about compliance with decision schedules and I want the Board to know, as well, that the Congress expects it to act expeditiously when faced with violations of decision schedule deadlines.

My amendment will not tie the Board's hands. It will still enjoy substantial flexibility—60 days—in which to negotiate a resolution in the event a deadline is missed.

If the agency decides to approve the project, well and good; but if it decides to turn it down, they have that privilege. Then, if they still do not have enough time, they can go to TECA and let TECA decide.

At the same time, however, both the Board and any errant agency will know that the clock is ticking—that the Board must act—and that tactics to delay hard, serious bargaining on a permitting decision are futile.

My amendment, then, will encourage compliance by permitting agencies with decision schedules. It will thereby, I believe, minimize or even eliminate those occasions when the EMB must initiate enforcement action—an action none of us want to see occur.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. JACKSON. Mr. President, I commend the Senator from Texas for this amendment. What he really has done is to plug a loophole. I know that may not be appropriate language.

Mr. BENTSEN. It could happen.

Mr. JACKSON. There could be an unnecessary delay, which could be avoided.

I commend the Senator for the amendment, because I think it will result in more expeditious action by the Board, knowing that they have to act within 60 days.

Mr. BENTSEN. I think it is not just the Board. It tells the agencies——

Mr. JACKSON. They are on notice.

Mr. BENTSEN. Everybody is on notice. It tells them that we are serious about it.

Mr. JACKSON. The Board cannot get the relief they may want in the form of endless delays.

Mr. DOMENICI. Mr. President, let me state to the distinguished Senator from Texas that I agree. However, it seems to me that we need to add a thought to his amendment which might be considered to be an escape clause. In other words, the Senator wants to have a decision-forcing mechanism which is 60 days. But I think we have to say that there may be a situation where it may be more expeditious not to do that.

Mr. BENTSEN. Under that kind of situation then let them go to TECA and let TECA decide. If these schedules have not been appropriate and they need to be extended let TECA go ahead and bring about that process.

Mr. DOMENICI. No. I am not talking about going to court. I am talking about the fact that the Board and the State may agree that another 10 days beyond the 60 would be the most expeditious way to handle things. Let me just read the Senator this language and see if it does not do what I am suggesting.

Mr. BENTSEN. No. I think if you get into that kind of situation where, say, both the Board and the permitting agency says, "Another 10 days we have got it made," then I think EMB has taken action. I think they made a settlement. I agree that is appropriate.

Mr. DOMENICI. I think the Senator would agree if we added the following.

If the Senator agrees, I will submit it. I want to tell what it says: "Except where the Board determines that it would be more expeditious"—let me try it another way.

Mr. BENTSEN. Do not cut the ground from under this, where they have a full escape clause.

Mr. DOMENICI. No; I am not going to, not at all.

Mr. BENTSEN. All right.

Mr. DOMENICI. Except where a more expeditious result would come from a deferral of action under subsection (a) or (b). I think that does leave the Senator with everything he wants. So it would say, "except where the Board determines that more expeditious results would follow on from a deferral of action under subsections (a) or (b)."

Mr. BENTSEN. I frankly like specificity in being more definitive than 60 days, I say to my good friend. We are trying to arrive at the same thing. I know that.

Mr. DOMENICI. Yes.

Mr. BENTSEN. And I have the escape clause in effect in there for them to go to TECA.

Mr. DOMENICI. But I am not talking about them going to court to do it. I am saying that there is a situation where they could agree that it might take longer than 60 days but the 60 days would be under (a) or (b) they would agree that it is the most expeditious way. I believe we are really making the amendment more workable and it clearly is what the Senator intends.

Mr. BENTSEN. It is clearly what I intend. I am not sure we are keeping enough pressure on the agency if we give them that kind of an out. How would the Senator be able to keep them from just using that for dilatory tactics? They are entitled to know that we are serious about this, putting these time limitations on. There should be some way after 2 years and 60 days that whoever starts a project would know that they are either on or off, have something or they do not.

Mr. DOMENICI. I am not trying to take pressure off anyone, because the agreement would have to be mutual that there is a better way than the 60 days, using expeditious handling.

Mr. BENTSEN. Both agencies would have to agree.

Mr. DOMENICI. Yes.

Mr. BENTSEN. I see. If not then the 60 days would prevail.

Mr. DOMENICI. I am even willing to say the Board would have to determine it is more expeditious and then they would agree.

Mr. BENTSEN. I think I can go with that.

Let me see what my friend from Louisiana says. What does he think of that?

Mr. JOHNSTON. Mr. President, I think the Senator's amendment is a good one provided that we can be sure it is consistent with section 18. Section 18 provides:

At any time prior to the completion of the priority energy project, the Board may * * * (iii) revise any deadline on the Project Decision Schedule; or (iv) add any new deadline on the Project Decision Schedule.

Mr. BENTSEN. I do not quarrel with that at all. I have stated that in the comments I have made.

Mr. JOHNSTON. So section 18 makes clear——

Mr. BENTSEN. I understand that.

Mr. JOHNSTON. That the Board can extend the project.

Mr. BENTSEN. Absolutely. And I explained that as I was explaining the amendment. All I want is that that Board act, that it does not just sit there and take dilatory action.

Mr. JOHNSTON. Mr. President, I think as explained we have the protection of section 18 which would give to the Board the right to extend the Project Decision Schedule, but it would require that they either extend or act within the time limit and not just sit there and sit on their hands and do nothing.

Mr. BENTSEN. Absolutely. I frankly think that takes care of the concern of my friend from New Mexico.

Mr. JOHNSTON. I wonder if the Senator will, to make it crystal clear, add the following action, "Subject to the provisions of section 18, the Board shall act."

Mr. BENTSEN. Yes. I have no objection to that at all.

Mr. JOHNSTON. Will the Senator offer that amendment, subject to the provisions of section 18?"

Mr. BENTSEN. I so amend and I will send the language up to the desk.

The PRESIDING OFFICER. Will the Senator send the modification to the desk?

Mr. BENTSEN. I am in the process of doing that.

The modified amendment is as follows:

On page 53, after line 25, insert:

"(c) Subject to the provisions of Section 18, the Board shall act as provided for in subsections (a) or (b) within sixty (60) days following failure of any Federal, State, or local agency to comply with a Project Decision Schedule."

Mr. DOMENICI. Let me say to my good friends from Louisiana and Texas, I do not want to belabor the point. The exception does not help because we have to change the whole scheduling back to the provision he suggested. I am talking about the Board determining that there is a more expeditious way to get this done than the 60 days. They make that finding and then they agree to how that will be done, and I think if we go with the Senator's amendment we do not give them that latitude.

Mr. BENTSEN. All right. I will go along with that. I really think we are going into something that gets beyond obviously the probabilities.

I will go with that as long as it is the Board that has to agree to that.

Mr. DOMENICI. Right.

Mr. JOHNSTON. Let me say, Mr. President, if I may say to my friend from New Mexico, the language in section 18 speaks of not revising the whole schedule but revising any deadline on the project decision schedule and then it provides for certain tests that must be met, including the concern of the Senator from New Mexico, stating that, for example, continued adherence to the schedule would be impracticable or would not be in the public interest.

Mr. DOMENICI. But I say to my good friend from Louisiana the deadline has expired, the 60 days is running, and they found that there is a more expeditious way to let the 60 days run. They found there is another way and they think another way is expeditious, provided under provisions (a) and (b) of that section. Why can they not agree to that?

Mr. JOHNSTON. They could, under section 18. They could revise the deadline.

Mr. DOMENICI. Let me read this language, "Except where the Board determines that more expeditious action would result from deferral of action under sections (a) and (b)."

Mr. BENTSEN. Will the Senator send me a copy and see where we can fit it into the amendment?

Mr. DOMENICI. Sure.

Mr. BENTSEN. I think we have frankly gone far beyond the realm of probabilities. To satisfy my distinguished friend, I am pleased to do so.

Mr. DOMENICI. I thank the Senator very much. I do not think it is beyond probabilities, but I appreciate his willingness.

Mr. BENTSEN. I did not describe his term "possibilities."

They do have to take some kind of action here anyway. All right, let us send up the amendment now. Mr. President, I am perfecting my amendment and sending the language to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as further modified, is as follows:

On page 53, after line 25, insert: "(c) Subject to the provisions of section 18, the Board shall act as provided for in subsections (a) or (b) within sixty (60) days following failure of any Federal, State, or local agency to comply with a Project Decision Schedule, except where the Board determines that more expeditious action would result from deferral of action under subsections (a) and (b), and the appropriate Federal, State, or local agency concurs."

Mr. JOHNSTON. Mr. President, we would have no objection, the majority of the committee, to the amendment, as modified, of the Senator from Texas.

Mr. DOMENICI. We have no objection.

Mr. BENTSEN. Mr. President, I urge the adoption of the amendment.

Mr. MELCHER. Mr. President, I wonder if the Senator from Texas will provide me with the intent of his language. Does the Senator propose that this amendment would take effect so that the Board could act to force a State to make a decision in less than 2 years if that was a project schedule?

Mr. BENTSEN. This does not change any options that the Board now has in that respect other than to say after the 2 years had expired—that is all this changes—then there is a maximum of 60 days within which the Board has to take action by either sending it to TECA or making a determination for or against or now the additional provision that has been put in there at the request of my friend from New Mexico. It does not change anything prior to the time.

Mr. MELCHER. If I understand the Senator correctly, it is his intent that the

State involved on a project decision that involves 2 years, any time during the 2 years may make a decision adverse to the project, in other words, turn down the project?

Mr. BENTSEN. It does not affect that, I say to my distinguished friend.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Texas.

The amendment, as modified, was agreed to.

UP AMENDMENT NO. 595

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky has the right to bring up his amendment at any time. Is he seeking recognition for that purpose?

Mr. HUDDLESTON. We are seeking recognition to reinstate the pending amendment that was set aside.

Mr. JOHNSTON. We are prepared to accept the Bumpers amendment.

Mr. HUDDLESTON. Mr. President, I withhold my motion so that the Senator from Arkansas may present his amendment, with the understanding that I will follow.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will be very brief. One of the major debates about this legislation was to what extent the Energy Mobilization Board would have the right to waive State or local law, if at all.

The PRESIDING OFFICER. Will the Senator withhold until the clerk reports the amendment? The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS), for himself and Mr. DURKIN, proposes an unprinted amendment numbered 595:

On page 31, line 4, insert the word "specifically" between the words "as" and "authorized".

Mr. BUMPERS. Mr. President, I rise to introduce an amendment intended to clarify the purpose of section 6(h), the substance of which I introduced during the course of committee deliberations upon S. 1308.

It is important to recall and, by recalling, to emphasize the genesis of this legislation. For a period of years, important energy projects have been needlessly delayed by the simple inability or unwillingness of Government agencies, at Federal, State, and local levels, to render decisions. This legislation attempts to rectify that situation by creating the Energy Mobilization Board to expedite the decisionmaking process, primarily by coordinating the activities of the relevant agencies, to avoid redundancy and, if necessary, to establish a decision schedule, providing deadlines where they may not otherwise exist.

The committee's discussion on this legislation demonstrated its resolve that, as a rule, no laws should be waived in order to accomplish the objectives of expediting decisions. The committee, however, recognized that certain statutes, as well as agency regulations which carry the force of statutes, could possibly inhibit expedition. It accordingly set forth specific methods by which appropriate deadlines could be met. For example, this legislation would authorize agencies to adopt new procedures which would permit quicker hearings and decisions than would be allowed under prevailing procedures.

In doing so, the committee did not merely rely upon constitutional principles of due process, but rather continued to insist upon the more specific protections secured by current procedures, although it provides somewhat greater latitude to the agencies in employing them. The imposition of deadlines and the exercise of procedure changes to achieve them must be leavened by the committee's adoption of a 2-year yardstick, which incorporates the flexibility to go beyond that period, rather than the inflexible 9-month limit which was once proposed. Similarly, the "grandfather clause" protects an approved project from changes in law which may prove expensive to the project because of retrofitting, unless the change is required to protect the human invironment. Rather than being a broad grant, it is a carefully and narrowly hedged protection.

The committee has provided for full judicial review of the adequacy of agency procedures and the reasonableness of all agency decisions. Thus, the reasonableness of the project decision schedule is subject to judicial review, and such review should be strongly influenced by the committee's oft-expressed intention to preserve existing law and to avoid imposing an overriding and inflexible statutory deadline.

Finally, the legislation reveals the committee's special concern that environmental laws be preserved. None of the substantive standards have been altered, and, with the exception of possibly preparing a simple EIS, current procedures are adhered to.

In order to make clear the committee's intent to allow only very limited adjustments of law, my amendment simply adds the word "specifically" in section 6(h), to protect that provision's intent to restrict, not expand, the Board's authority to alter laws. Thus the provision allows only those alterations which are expressly and specifically authorized, and it permits none which might be implied.

Mr. President, during the course of deliberations of the Energy Committee I offered an amendment to state that the Board would only waive State or local law as specifically provided in the bill, so that there would be no question about what the Board's rights were.

The Senator from Washington (Mr. JACKSON) offered a substitute which was accepted at that time. Unfortunately, in the RECORD during the debate on his substitute the word "specifically" was never mentioned, although it was in my original amendment.

What this amendment does, Mr. President, is to simply modify the language of section 6(h) to add the word "specifically" so that it will read that "the Board may alter Federal, State, and local law only as specifically authorized" in the sections listed there, which, for example, allow the Board to set up project deadlines.

It is just that simple, and I can tell you in one sentence that it is designed to prohibit any appellate court or any other court from ever deciding that there is a permissive right to imply any further rights. I want to remove the possibility of an implication of the right to waive State and local law.

Mr. JOHNSTON. Mr. President, I hope Senators have listened to the Bumpers amendment because we are about to accept it. It nails down and makes absolutely clear there is no implied waiver of State or local law, and it is consistent entirely with what we have been saying all morning that the only powers the Board has with respect to State and local law are those specifically set forth, and that is on the project decision schedule and to the very limited extent provided for in the grandfather clause. So this nails it down and makes it clear.

I hope no one will be confused any more. Mr. President, we will accept the Bumpers amendment.

Mr. FORD. Before the Senator does that, will the Senator yield for a question?

Mr. JOHNSTON. Yes.

Mr. FORD. Does the Senator understand that Federal, State, and local law is included in this?

Mr. BUMPERS. Federal law is included. I did not say "Federal" in my remarks, but it is included.

Mr. FORD. Federal law is included in this.

Mr. BUMPERS. Yes.

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. Mr. President, I too on behalf of the minority want to accept the amendment. I personally want to thank the many Senators who obviously believe that is exactly what we intended in this bill when they indicated their support for it heretofore. This clearly indicates that the good Senator from Arkansas who offered the language in committee, the original language, clearly intended that it be an inclusive rather than exclusive type of statement.

Now we have used the word of art, and I commend him for bringing it to us. I thank Senators for knowing that we were telling them that is what was intended, and I think the Senator has now nailed it down.

Mr. BUMPERS. I thank the Senator very much for his remarks. I thank the distinguished floor manager for accepting the amendment, and I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

UP AMENDMENT NO. 592, AS MODIFIED

Mr. HUDDLESTON. Mr. President, we are now back on my amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON), for himself, Mr. RANDOLPH, Mr. FORD, Mr. WARNER, Mr. YOUNG, Mr. BAYH, and Mr. ROBERT C. BYRD proposes an unprinted amendment numbered 592.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 35, after line 2 insert the following:

"(d) The Board shall designate any fossil-fuel fired electric generating plant for which such designation is requested as a priority energy project if such project involves (1) the conversion of a facility from the use of oil or natural gas to coal or a coal-derived fuel, or (2) the construction of a new facility which would replace an existing oil or gas fired facility with coal or coal-derived fuel fired capacity."

Mr. HUDDLESTON. Mr. President, this is the amendment which has already been discussed at some length here on the floor. It was temporarily set aside some time ago. It is now up for consideration.

Just by way of review, this amendment would simply require that any energy project to convert a utility boiler from the use of oil or natural gas to coal would be considered as a priority energy project and given fast-track treatment by the Board.

The purpose, of course, is to really give some impetus to the imperative we have in this country of reducing our use of foreign oil. The only way we have immediately to deal with the question of reducing oil use is the greater use of coal.

It is because of that fact, and the fact that we have imposed upon us now by the President an import limitation on oil equal to that amount we imported in 1977, that it is extremely important that we have onstream as quickly as possible a method to reduce the consumption of oil. This is the best and virtually the only method available to us at this time. That, in my judgment, justifies this kind of treatment for these specific projects.

I yield to the Senator from West Virginia for such remarks as he cares to make at this time.

Mr. RANDOLPH. Mr. President, we have debated the pending amendment earlier today at some length. I simply wish to reemphasize that in 1973 and 1978, the Congress of the United States, after careful consideration of the conversion from natural gas and oil to coal, gave to the administration the opportunity, in fact the responsibility, to move into a program for conversion, reconversion, and replacement of utilities to coal from natural gas and oil.

Mr. President, I know that the able manager of the bill, the Senator from Louisiana, knows that practically nothing has been done with these statutes, even though the legislation passed in 1978 was part of the National Energy Act. Make no mistake about it. It would be clean burning of coal, and we could save approximately 1.5 million barrels of oil per day by doing exactly what is proposed in the amendment that is now pending. We would free the amount of foreign oil being burned presently in utility boilers for generation of electricity.

I have been a strong advocate of synthetic liquid fuels. Certainly the record indicates that the original synthetic liquid fuels bill, as my colleague from New Mexico (Mr. DOMENICI) has pointed out, passed this body in 1944, and that Senator O'Mahoney of Wyoming and I coauthored that legislation.

We found through rigorous testing that the production of synthetic fuels, not only derived from coal, but oil shale, and agricultural and forestry products, was all technically feasible.

We found we could produce synthetic fuels. We did it through the modified Lurgi and Fischer-Tropsch processes successfully used by the Germans, using it in their war machine both in the air and on the ground. Tanks were even run on fuel made from coal. But, after the war the synthetic liquids fuels bill was allowed to die.

Today I am still a strong advocate of synthetic fuels. I have cosponsored, with the able Senator from New Mexico, legislation to create an Energy Security Corporation. However, we know that this industry cannot grow or service our domestic energy needs immediately. If the bill were passed today, if the President signed it before nightfall, nothing could happen, because it would take time to develop.

We should have it. We needed it then. We need it now. It should never have been permitted to wither and die on the legislative and administrative vine. But it did so, and $3 million was returned to the Federal Treasury. It was a sad chapter in the history of America but it did happen.

Then, as we continued to use huge quantities of oil and gas in the years following the war, I said before, the Interior Committee, in 1959 and again in 1961—that, each year that we delayed perhaps brought us one year nearer to disaster." That was a fact then, and it continues to be a tragic fact today. The gas lines, of course, have now disappeared from in front of the filling stations, but the crisis in energy is as real now, and even more so than that experienced a few short months ago by the American people.

Everyone said then, "We must do something, and do it now." Well, here is the opportunity to do it now, to use coal, the most abundant fossil fuel we have, in clean burning programs already approved by the EPA.

The programs are feasible, the costs are in its favor over other alternatives. I repeat 1.5 million plus barrels of oil can be saved daily if we will do this.

I have spoken earnestly and vigorously, and I trust that Senators JOHNSTON, DOMENICI, and others from this committee will accept this amendment which is offered by Senator HUDDLESTON, and in which I have the privilege, with other Senators, of joining.

In doing so, you will be doing what the President has so often said, that we must have not only the increase in domestic petroleum production, but also increase the use of coal which we can already produce.

This amendment is not only an opportunity to do something now on a program that can be placed into effect immediately, but it is proof positive that the continued indecision on Capitol Hill and downtown, the constant rhetoric with which the American public is overly tired, will end. We will act now on a program that is immediate in its effect on the conservation of petroleum and makes it available for home heating and other uses far more suitable than in the coal boilers of the electric-generating plants.

Mr. JOHNSTON. Mr. President, I certainly agree with what the able Senator from West Virginia has said and what the able Senator from Kentucky has said as to the national need to convert facilities from the use of oil or natural gas to the use of coal. There is no greater priority, it seems to me, in the country than that.

We considered, when we marked up this bill, including specifically designated kinds of facilities, just designating them for fast track. We considered, for example, the major, one-of-a-kind synfuel demonstration plants. We considered these plants. But we thought it better to leave in the act a general description of the kinds of facilities defined with reference to what they do for the domestic energy supply and getting us off imported energy, to define it in a general way and leave it to the Board, in their discretion, as to what to designate or not to designate.

However, we certainly agree that this is a very high priority. I guess our only concern—I would not ripen that concern into a real objection—is that it sort of violates the drafting purity of the bill by designating one kind of facility.

We would certainly oppose getting into a whole list of the kinds of facilities that are entitled to fast-track treatment. This is, in a way, the first step in stating that list as opposed to leaving that to the discretion of the Board under the general directions contained in the definitions.

Mr. President, if the committee shows some ambivalence, that is exactly true: We are ambivalent toward this amendment. We agree that it is a high national priority; we resist the idea of setting forth the whole list of plants.

So, Mr. President, we are willing to let the Senate decide this matter without recommendations and, indeed, without objection. I shall, therefore, Mr. President, ask for the yeas and nays on the amendment. I should like to go ahead and submit it at this point for consideration.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, I agree with the statement of the distinguished majority manager of this bill, the Senator from Louisiana. The issue is really not whether this is the highest priority in terms of our short-term solutions, to cut back on imported crude oil, because

the answer is yes; there is no question about that.

In fact, I think it could be agreed, at least by a compelling majority, that experts would agree that coal conversion, drilling for oil and natural gas, and conservation are the three most economical ways to address America's dependence. Obviously, this is one of the three, conservation is another and the expedited drilling for oil in America is the third. There can be no doubt about that.

Now, we are in a peculiar position here because this fast-track Board, in its authority as it comes out of committee, is charged with making its own determination of what is a priority energy project within the boundaries of the goals and definitions in this bill, and none are specific. There is no question in my mind that this should be one of those specifics. The question is whether it should be mandated in the bill or not.

I think the Senate clearly understands the issue: Should it be totally up to the Board; should we say, pick the most important one and run with it and take it and consider it immediately, or not? That is the issue.

I believe that, as long as we keep it within a reasonable dimension of those that everybody agrees are most important and must be considered, there is no great violence to the bill. But I, too, think the Senate should decide, so I am not willing to accept the Senator's amendment.

Mr. JOHNSTON. Mr. President, I had asked for the yeas and nays. I still have no recommendations, but I should like to vitiate the order for the yeas and nays unless somebody else wants them. I am willing to submit it to the Senate on a voice vote unless any Senator desires to have a record vote.

The PRESIDING OFFICER. Is there any objection to vitiating the yeas and nays?

Mr. MUSKIE. Mr. President, I find myself tangled up, which has been my posture all day.

I have read the amendment and I have listened to the discussion and also had the opportunity to discuss it with the proponents. My information and my reaction to it are the same, I gather, as that of the floor manager. I think it is just not good legislation to create a Board of this kind and give it discretionary authority, and then mandate the application of that discretionary authority in the same legislation. I think it is simply bad legislation.

I am not inclined to push that point any further, because I have a couple of other things I should like to get involved in and would like to call up an amendment when this one is disposed of. So I am not disposed to ask for a recorded vote. I simply rose in order to indicate my reservations about this kind of procedure, which is a bad procedure.

If we create discretion in an agency and we have adequate guidelines—and the proponents of the bill argue that there are adequate guidelines—then we ought to leave it to the Board to make decisions. I expect that the Board probably would give consideration to the list of projects that have been brought to my attention as eligible for consideration. I do not know that much about them, but from what I have been told about them, I would expect that, without any action on this amendment, the Board would probably give consideration, even upfront consideration, to the projects on that list. But that, to me, is not a justification for this amendment; it is an argument against it.

Having said that, Mr. President, I say to the floor manager, I am not disposed to ask for a record vote.

I yield the floor.

Mr. FORD. Mr. President, may I have just 1 minute?

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. First, let me thank the floor manager for his cooperation. I associate myself with the remarks of my distinguished colleague (Mr. HUDDLESTON) and the distinguished Senator from West Virginia.

I do recognize the position of the Senator from Maine, the helpful position he has taken. Let me make two quick points.

Two bills have been passed. Both of those bills made an attempt to convert to coal. That has not happened. Three administrations have said we should convert these utilities to coal. Nothing has happened. I think it is time now that the Senate make its voice heard, as it has in the past. Everyone here today admits that we must back off from the oil we purchase from foreign sources. My distinguished colleague from Kentucky has said that we have a limit, and we are going to be pushing that limit for some time, on imported oil. Why, then, should we not find a way to keep our dollars at home, use our own energy, create new capital investment, give additional Americans jobs, and do it with American resources?

I hope all my colleagues will vote "aye" and that this amendment will be accepted.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) be added as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the vitiation of the order for the yeas and nays?

Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

Mr. FORD. I move to reconsider the vote by which the amendment was agreed to.

Mr. HUDDLESTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE and Mr. ARMSTRONG addressed the Chair.

Mr. MUSKIE. Mr. President, I think the Senator from Colorado is seeking recognition and would like to call up an amendment.

Mr. ARMSTRONG. Mr. President, I am seeking recognition for the same purpose as the Senator from Maine. I shall be happy to defer to him at this time.

Mr. MUSKIE. I appreciate that, Mr. President, and I shall accept the Senator's generous offer, because I think maybe this will bring to a head a couple of key issues in the bill.

AMENDMENT NO. 486

(Purpose: To amend S. 1308)

Mr. MUSKIE. Mr. President, I call up amendment No. 486 and I think that might expedite consideration of this bill.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. MUSKIE) for himself, Mr. STAFFORD, and Mr. RIBICOFF, proposes an amendment numbered 486.

Mr. MUSKIE. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 140, line 3, strike all through page 141, line 8.

Beginning on page 51, line 23, strike "(a)" and all after through "(b)" on page 52, line 17.

(Mr. TSONGAS assumed the chair.)

Mr. MUSKIE. Mr. President, what this amendment does is, first, strike the grandfather clause in the bill. We have had considerable discussion on that clause over the past 2 days, so I think that single reference will clearly indicate what it is that I seek to do.

The second part of the amendment strikes the authority of the Board to make a decision in lieu of State and local agencies.

This issue, also, has been debated in the course of the last 2 days. I think it speaks for itself.

The first provision is found on page 140 of the bill, line 3, and the amendment would strike all through page 141, line 8. That language to be stricken constitutes the grandfather clause in its present form.

The second part of the amendment begins on page 51, line 23, and the amendment would strike (a) and all after through (b) on page 52, line 17.

That second section to which I have referred is described in the bill as "enforcement of the project decision schedule."

With respect to the grandfather clause, Mr. President, I have indicated at great length my concern about the clause. I do not know that it is necessary at this time to discuss it at great length.

But I, and the other sponsors of this amendment, support the basic principle of S. 1308.

As a method of expediting decisionmaking on energy projects that would contribute to reducing the Nation's dependence on imported oil, it is clearly desirable. But because of two flaws that this amendment seeks to strike, S. 1308 will not lead to expeditious decisionmaking.

The ability of the Board to substitute its judgment for that of State, local, and Federal decisionmakers and to waive all State, local, or Federal requirements adopted subsequent to contruction, will complicate, not ease the development of

new energy facilities. I emphasize that it is my conviction these authorities will complicate the development of new energy facilities and not expedite them.

These provisions will lead to a morass of contention and indecision for every project in which they are involved. As the National Conference of State Legislatures has observed:

> We must take care that we do not create an agency that would only add to delays by imposing more cumbersome procedures fraught with more opportunities for litigation. The National Conference is concerned that the powers proposed for the Mobilization Board in S. 1308, the Energy and Natural Resources Committee bill, could well have just this effect.

Our amendment strikes section 36 and 21(a) of S. 1308. Both of these provisions are directly contrary to the heart of our federal system. They both allow the legitimate decisionmaking processes of State and local government to be flung aside in favor of a narrow interest. Statutes and other requirements adopted to protect workers and the general public can be abrogated by a single-minded Federal official.

Such proposals are of dubious constitutionality, infringing on the sovereign powers of States to protect their citizens. But beyond that, they directly conflict with the cooperative spirit which will be essential to speedy determinations on critical energy projects. These two provisions will bog the Energy Mobilization Board down in matters it is not suited to address, which it cannot become competent to address. The use of these authorities will inevitably lead to litigation in which State and local governments are the complaining parties.

Mr. President, on September 28, 1979, Senator ROTH placed in the RECORD letters of opposition to these two provisions from every State and local government group. The National Governors' Association, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the National Conference of State Legislatures—every one of these spokesmen for State or local officials protested these intrusions into areas of State and local responsibility. Mr. President, an energy mobilization effort will not work unless it has the cooperation and support of all levels of government. These two provisions are major obstacles to that cooperation.

Mr. President, section 36 of the Energy Committee bill allows the waiver of all requirements adopted after a priority energy project has commenced construction.

We referred to that over and over again today.

This "grandfather" provision is apparently based on the motion that imposing any new requirement, no matter what its motivations or justification, will threaten an energy facility's viability. Are the projects this fast-track legislation seeks to advance truly so economically vulnerable? Must they be protected from all the benefits of later acquired wisdom?

This approach fails to recognize that new requirements are often developed and adopted as specific remedial responses to problems which were unknown or unknowable at the time a project was initially approved. The waiver provision could effectively prevent corrective action needed to protect workers, or the public, or the environment.

Mr. President, the Nation's priorities shift, as rapidly as our knowledge advances. The consequences of any waiver of subsequently adopted requirements is to freeze in place the values and judgment of a single moment. The ability of State and local decisionmakers, or indeed the Federal Congress, to respond to future developments with effective action would be severely hampered.

The National League of Cities stated:

> While S. 1308 limits substantive waiver to future laws, this is nevertheless a major incursion on the rights of local government. Many of the projects designated as priority will be new and untested technologies. They may cause new and unforeseen problems. To impair a local government's ability to deal with those problems, as S. 1308 does, is an unconstitutional intrusion on the right of local government to protect the health and welfare of its citizens.

A common example of the energy projects for which accelerated consideration is thought necessary is synthetic fuels production. Yet such projects have the potential for creating serious new toxic pollutants.

We do not know how harmful the pollutants are.

We do not know how sweeping the contamination would be.

But we do know that splitting the molecules of coal to make oil or gas creates some different pollutants from the mere combustion of coal. And these pollutants are frequently cancer-causing or suspected of being so.

Too often we waited to observe the effects of long-term exposure and only then recognized that mistakes were made. We should not duplicate that same process knowingly. Yet, we are close to adopting an energy policy that would guarantee such an approach. Facilities would not have to meet any additional requirements once construction had had commenced.

No additional cleanup, even if we find the toxic levels are threatening local populations.

No additional cleanup, even if groundwater supplies of the local population become contaminated by discharges.

No additional cleanup, even if we discover that workers in the plants are developing cancer-like skin lesions.

Such impacts on workers are not mere conjecture. In 1960, Union Carbide closed a synthetic fuels plant precisely because such lesions were appearing on plant workers.

Particularly in a new area, we should not bar our capability to improve a facility after we place it in operation.

This provision could actually hurt the development of synthetic fuels. It would bar the orderly development of environmental controls, and create continued resistance on environmental grounds.

Not only environmental requirements would be affected by this waiver provision, but also siting laws, tax laws—such as the severance tax, especially—zoning laws, environmental laws, and others which I described this morning, could be waived if the Board—a body whose sole purpose is expeditious energy development—feels these requirements affect the "cost effectiveness" of the project.

Detailed examination of section 36 reveals further problems. It is not a board, but a single official, the chairman, who actually wields the waiver authority. The only check is that the waiver is "necessary to ensure timely and cost-effective completion" and "will not unduly endanger public health and safety"—again, as determined by this single Federal official.

We have no assurance whatsoever of what standards will be applied in the terms "cost-effective" and "unduly endanger." The legislative history on this provision contains nothing but a repetition of the language of the bill. I submit that the phrase "unduly endanger" is too vague to be entrusted to the sole discretion of an individual whose primary orientation is energy development. If the phrase means anything, it suggests a balancing process which demands agency-type expertise, public participation, and the consideration of alternative measures to attain the same end. There is no hint of any of these needs in section 36.

The section does provide that the Congress may explicitly prohibit the waiver of subsequently enacted requirements. But there is no direction on how such a prohibition must be expressed. This invites future conflicts between the executive branch, or at least the Energy Mobilization Board Chairman, and the Congress.

One major ambiguity in section 36 is the reference to "public health and safety." This phrase customarily does not include workers, yet occupational exposure may be one of the most serious problems of these newer facilities. Section 36 does not require the Board Chairman to consider protection of workers before granting a waiver.

We have learned that major plants often act as restraints on further growth in an area. Their air emissions, water use, sewage discharges, or demands for public services make it impossible for newer plants to locate in the surrounding area. This waiver provision would prevent a State or community from requiring any reductions in such consumption, even those well within technological capability. There would be no effective way to make room for new growth. A "fast-tracked" plant would have priority for all time.

Mr. President, the National League of Cities summarized its concerns with section 36 in this way:

> Most objectionable to local governments is the power which S. 1308 gives the EMB to override substantive requirements of laws enacted after construction has begun on a priority energy project. Such unprecedented power for a federal agency is very probably an unconstitutional infringement of local and state rights. It will undoubtedly be challenged in court by a number of parties, which would hinder EMB from functioning effectively for some time.

The power of the EMB to waive laws is also unchecked by any requirement for presidential or congressional concurrence. This would leave local officials without any recourse or appeal from a decision by the EMB to waive a local ordinance.

Similarly persuasive observations were made by the National Conference of State Legislatures:

Despite the sparse evidence for state intransigence, S. 1308 would give the EMB unprecedented power to annual state and local laws. This power itself raises major constitutional questions about state sovereignty and due process, and could well draw the Board into more litigation. New energy technologies will almost certainly develop unanticipated problems, and state and local governments should retain their rights to protect public health and safety. Yet the Board's decisions to waive these rights would be subject to the procedures designed to protect the facility, not the rights. The Board would have to consult the affected state or local agency and find that the waiver would not "unduly endanger public health or safety," but there is no requirement for public participation, no requirement for a formal record, not even a commitment to impose alternative measures to reduce public risks. A waiver would take effect unless Congress "explicitly prohibits" it, but the bill says nothing about the form of this prohibition, or when it must be considered, or whether it must be considered at all. These are hardly adequate safeguards against such a far-reaching and constitutionally questionable intrusion into state and local prerogatives.

There are several principal objections to section 21's authority for the Board to make decisions in lieu of State, local, or Federal agencies that have not met deadlines in the project decision schedule. Again, this is a power which under S. 1308 would be exercised by one person, the chairman, and not the Board as a whole. And the chairman's full-time job is accelerating energy development, not the cultivation of those values the State, local, and Federal substantive agencies are intended to protect.

The National Conference of State Legislatures has criticized section 21 with these words:

One of the most troublesome aspects of S. 1308 is the authority it gives the Board to make decisions in lieu of state or local agencies that fail to meet Board-set decision schedules. As a practical matter, substantial momentum could be lost during the time it would take the Board to complete the decision-making record of the state or local agency, decide what information is most important and review existing state or local statutes and case law to determine how they should be applied. Secondly, the Board would probably be more subject to lawsuits because it would be perceived as a single-purpose agency whose primary mission is to facilitate energy projects, not to observe the spirit of state and local laws.

A more important question is whether the lean, fast-moving entity originally conceived by its authors could even pretend to know the intricacies of the many state and local functions it might seek to displace. Simply to assume the responsibilities of a state or local agency, the Board would need substantial expertise to assure that its decisions are judicially sustainable. The likely result is thus not timely action but a redundant bureaucracy absorbed in defending itself against the unnecessary litigation its every action makes possible. Far better to let the state or local agency make the decision itself, under court order if necessary, than to create an untried entity with powers that tend to make self-justification its primary reason for existence.

Mr. President, I have read at length from these communications I have received from these distinguished conferences representing State legislatures, State governments, and State Governors, because I think that anyone reading what they have had to say, anyone hearing what they have had to say should be impressed with the thoughtfulness and sense of responsibility with which they addressed these issues.

For those who have lost faith in the ability of State and local government to perform the responsibilities which are theirs, they should read these letters. Are these the people who are responsible for our energy crisis? Are these the people who created all these problems that are going to be solved overnight with the passage of this bill? These are responsible legislators and Governors and State officials, who are conscious of their responsibility, also, perceptive as to the risks for local government and for an effective energy program which lie within the parameters of the legislation pending before us.

Either the Board will have to develop a parallel bureaucracy to provide a defensible basis on which it can make these critical decisions, or it will make them in ignorance. Neither of these alternatives is attractive. Another large bureaucracy to make decisions on State and local law is the last thing we want, especially at the Federal level. And the temptation to spend all its time and effort defending its decisions against the inevitable litigation will paralyze the Board.

Of course, a fundamental objection to this approach is that it usurps State and local decisionmaking responsibilities, as well as those of Federal agencies charged by law with specific tasks. As the National Association of Counties observed:

While we support an Energy Mobilization Board we feel very strongly that state and local governments should retain authority over the final determination of decision deadlines as it relates to our laws and procedures. In addition, we feel that we should retain our authority over siting and permitting decisions without fear of federal preemption. Consequently, we oppose any structure which would allow an appointed federal body to substitute its judgment for that of state and local decisionmakers.

So, Mr. President, I called up this amendment not simply as a reflection of my own concerns with this legislation, which I have amply described, but because I think I have a duty to insure that these representatives of State and local governments whom I have quoted are effectively and vigorously represented in the Chamber of this body, presenting their protests against the threatened intrusion upon their responsibilities, upon the performance of their responsibilities, upon the very viability of local government to act in these areas and to respond to the unanticipated, unknowable, unpredictable risks which the people of their constituencies will call upon them to address if these energy projects create the kind of risks for public health, public safety, and the environment that I think clearly lie in the future.

For anyone to vote on this legislation on the assumption there are no such risks is to perform a disservice to the people of this country and to the future of their health. To handcuff the agencies which have been created over the last 15 years, with widespread public support, to deal with such unknown, and unanticipated risks is a second disservice.

That is what these distinguished public servants from the State and local levels of this federal system are saying to us. The letters I can only describe as thoughtful, perceptive and deserving of serious consideration.

Mr. President, I yield the floor.

Mr. JOHNSTON. Mr. President, this is essentially the same amendment we considered this morning, not in all its parts, but in its principal parts. That is the grandfather clause, which we debated over a period of hours, and the essential part of the enforcement of the projects schedule. That is the right of the Energy Mobilization Board to decide in place of the agency or the State or local agency should they fail to make the decision within the reasonable time provided. The amendment simply guts the bill.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. JOHNSTON. Certainly.

Mr. DOMENICI. When the Senator says it guts the bill I say to my good friend is he saying that this is not an amendment that modifies or changes the grandfather section but totally deletes and leaves the bill totally void of any grandfather provisions?

Mr. JOHNSTON. The Senator is correct. Not only the grandfather provisions but the so-called bumper provisions by allowing the Board to decide in place of the agency should the agency itself fail to meet the deadlines.

Mr. DOMENICI. So, as to the grandfather provisions, and some kind of grandfather provisions are thought by most people to be necessary to carry out some of the critical purposes of a Mobilization Board, then if this amendment is adopted that characteristic is gone from the bill. There is no ability to grandfather anything even qualified, conditioned, or otherwise. It is gone. Is that correct?

Mr. JOHNSTON. The Senator is correct and, as I repeat, not only the grandfather but the right of the Energy Mobilization Board to decide in lieu of the recalcitrant State or the Federal agency.

So if this amendment were passed, I think this bill would have lost its utility. I think it would be an empty shell and, Mr. President, a turkey whether baked, broiled, or basted is still a turkey. It is the same amendment essentially that we voted on this morning.

So, Mr. President, I am going to move to table because it is the same thing we have debated all this while. Therefore, I move to table the amendment.

Mr. MUSKIE. Mr. President, will the Senator withhold, please? This is not the same thing. This is not another sub-

stitute. This is two bills addressed to the principal issues which have been debated.

The distinguished Senator from Connecticut, who is a coauthor of these amendments, would like to speak. If the sponsors' position on these amendments is so unassailable, as they would suggest it is, they surely ought not to be afraid of whatever arguments we may offer. These two amendments address the very heart of the issue that separates us, and to dismiss it so casually as to table it immediately after they are presented, I think to me is to ignore the public stake that is involved in this legislation.

Mr. JOHNSTON. Mr. President, I certainly do not want to treat the amendment in cavalier fashion. To the contrary, I think the amendment guts the bill, and——

Mr. MUSKIE. Then you ought to be forced to make a case.

Mr. JOHNSTON. Mr. President, every argument I would make against the amendment has already been made, has already been made over and over to almost the point of distraction, and all we can do by further debate, Mr. President, is to prolong the decision on this bill.

Mr. President, yesterday I spoke about tabling the amendment of the distinguished Senator from Maine and the distinguished Senator from Connecticut. Of course, I was more than willing to extend the time to allow full debate.

Mr. MUSKIE. Mr. President, will the Senator yield at that point?

Mr. JOHNSTON. I will yield for a question.

Mr. MUSKIE. I am really struck by the Senator's attitude. This legislation is principally within the jurisdiction of the Committee on Environment and Public Works. We yielded our right to request sequential referral in the interest of expediting it, so we were given no opportunity as a committee to address these issues.

When we try to do it on the floor the Senator likes to suggest he is being magnanimous in allowing one or another of us to speak. That is my concern with the bill, that environmental values will be treated just as cavalierly by an Energy Board, created with an energy emphasis, as it is the disposition of the proponents of this bill to treat us.

You do not even want to hear the case. You may think that the amendment has been adequately covered by debate up to this point. We do not, and State legislatures do not, State Governors do not, and the counties of this country do not think so, because they are calling me now urging me to present these amendments. Now the Senator wants to cut us off.

Mr. JOHNSTON. Mr. President, may I ask the Senator from Maine how much time he would like? Is he willing to go with a unanimous-consent request that a vote on the motion to table occur at a time certain?

Mr. MUSKIE. Half an hour would be fine.

Mr. JOHNSTON. Mr. President, I therefore ask unanimous consent that on my motion to table a vote occur at 4:05 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving the right to object, I have no objection to a vote being taken on this matter at 4:05, providing that during that time the Senator from Colorado is allocated 5 minutes.

Mr. MUSKIE. Not later than 4:15.

Mr. JOHNSTON. Mr. President, I would amend the unanimous-consent request to state that the vote occur on the motion to table the amendment of the Senator from Maine no later than——

Mr. MUSKIE. Just a moment, if the Senator will withhold. There is a possibility that we might want to get to the point where we would want to consider a modification of the amendment. If we agree to a unanimous-consent request at this point, we may be foreclosed.

One of the reasons why I called up the amendments, in addition to wanting to present them certainly on their merits was to open up the opportunity for modification.

Mr. DOMENICI. May I say to the Senator from Maine I would have to object, not on a substantive basis, but I have told the Senator from Alaska that he would go immediately after your substitute, and we accommodated others. He must leave at 5 o'clock, and he wants to offer his substitute no later than 4:15, 4:30, and if we cannot accommodate him I would not go along with the unanimous-consent request.

Mr. MUSKIE. May I say to the Senator, No. 1, I was not a party to that agreement. No. 2, I did not call up the amendment from the time we voted on the motion to table at 12 o'clock until 3 o'clock waiting for Senator STEVENS to offer his amendment. I understood he wanted to offer it immediately after the vote on the tabling motion. He did not do so.

Now I am being asked to cut short my discussion of my amendment because he did not. I am sorry, I would like to accommodate other Senators, and I thought I was doing so.

Mr. JOHNSTON. The Senator, of course, would have the right to put in a modified amendment after this, and we do not mean to cut off any negotiation if the Senator wants to negotiate. We simply want to bring this matter to a head. The Senator from Louisiana desires to push this to a vote as quickly as possible consistent with the ability of the Senator to be heard.

Mr. MUSKIE. There are other Senators who have modifications of the grandfather clause. Senator RANDOLPH has one, Senator DOLE has one, and there may be others.

Mr. JOHNSTON. This will not cut off their rights.

Mr. MUSKIE. This creates the opportunity for resolving all these issues at one point. It would seem to me that is a constructive objective. We can instead proliferate the debate on various grandfather clause amendments and stretch out the time on this bill indefinitely. If that is the pleasure of the managers of the bill, so be it. But I think we have called this one up, we are on the issue——

Mr. JOHNSTON. The Senator wants the ability to modify his amendment?

Mr. MUSKIE. I think other Senators may.

Mr. JOHNSTON. And to have votes on those?

Mr. MUSKIE. I might consider them. I am not going to initiate one because I think—I like the amendment as it is.

But, on the other hand, I also can count votes; at least I understand where the votes are, and if Senators are interested in promoting one modification or another, it seems to me this is a good opportunity to do so. I do not know why we should cut it off arbitrarily at this point only to have to resurrect the opportunity subsequently.

Mr. DOMENICI. Mr. President, reserving the right to object, I want to say to my good friend from Maine I was not implying a while ago that the Senator was in violation of any agreement with the minority whip, Senator STEVENS, but rather Senator JOHNSTON had made a motion to table, and the Senator was asking that it be delayed, and in agreeing to a time I was just concerned that we were not going to let another Senator down with whom we had agreed. So I am not in any way saying the Senator is a party to that agreement to help Senator STEVENS. I did not mean that at all.

Mr. RIBICOFF. Mr. President, may I make a comment? I would hope that the manager of this bill would not compound a pyrrhic victory being achieved by the administration in creation of this EMB by trying to be heavyhanded. By being so heavyhanded, you are denying the opportunity of the opponents to discuss this proposal.

A very able newspaper person in the Washington Star today has pointed out the unholy alliance between the White House and the energy lobbyists to try to defeat the Ribicoff-Muskie proposal.

Frightened at the prospect of support for the proposal, they called upon a lobbyists for the oil companies, the gas companies, the coal companies, and others to bring pressure against the Ribicoff-Muskie proposal.

I believe the President, in following such policies, has done great damage to his energy proposals, which are now in tatters.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. RIBICOFF. No. It will be a mistake to continue this effort on the floor of this body to cut off debate on behalf of a group of Senators who, in my 18 years in the Senate, have never indulged in a filibuster, never held this floor unnecessarily, and are always willing to agree upon time. Those attempting to prevent a full discussion, I believe, have exercised a degree of bad faith concerning the understanding that was entered into in the majority leader's office before the August recess. We had agreed to try to work out proposals and bring a degree of understanding and statesmanship to this program.

The Senator from Louisiana can move to table if he so wishes, but it is my opinion that the whole energy program will pay a heavy price for tactics such as this.

Mr. JOHNSTON. Mr. President, I think the Senator from Connecticut knows that I do not want to cut him off from debate.

We certainly do not want to be heavy-handed.

If I had intended to cut him off, I would have moved to table without withholding, as the Senator from Maine asked, or without even suggesting—I asked how much time he would need, which was the reason I requested unanimous consent. If the Senator thinks it is being heavyhanded to ask how much time would be needed, I am willing not to ask for it.

I only ask that if we withhold our parliamentary right, which is a right to move to table on a matter which I believe was debated this morning—you can disagree with that if you wish—I would hope we could bring the matter to a reasonably rapid conclusion.

With that statement, Mr. President, I will withdraw my request for unanimous consent, I will withdraw my motion to table, and I will simply appeal to the sense of expedition of the two Senators.

Let me say one thing further with respect to an agreement in the majority leader's office. I, of course, was not there, as the Senator knows.

Mr. MUSKIE. You were not there, but the chairman of your committee was there.

Mr. JOHNSTON. At the same time let me say, Mr. President, the staff advises me, first, that the Committee on Environment and Public Works never adopted by vote a position. Second, they——

Mr. MUSKIE. What difference does that make?

Mr. JOHNSTON. Well, the difference is simply that there are certain members of the Environment and Public Works Committee which had concerns which were, to a large extent, accommodated, I am advised, in this bill.

Mr. MUSKIE. They were not accommodated. We agreed to yield our rights as a committee, and now that has been thrown at us as some kind of abrogation of duty. I do not understand this at all.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. JOHNSTON. Let me say one thing; then I will yield to the majority leader.

I am not aware of any agreement being reached. As I say, we are very sensitive to the conflicting jurisdictions. It is at best always a difficult thing to reconcile conflicting jurisdictions. I hope it was done adequately in this case. If it was not, I personally regret it, and we will try in the future to harmonize, reconcile, and accommodate the desires of Senators, as I am doing at the present time by withholding the motion to table and withholding the unanimous-consent request.

Whatever was done in that respect, it is too late now to go back and correct the past, but if the Senator has an amendment, he can of course bring it up at the present time.

I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, we have spent about 10 minutes here talking about nothing, with all due respect to everyone.

I ask unanimous consent that the Senator may have an up-or-down vote on his amendment, and that the vote occur not later than 4:30 p.m. today, and that it be followed by an amendment by Mr. STEVENS and Mr. HUDDLESTON.

We did have a kind of gentlemen's understanding yesterday to the effect that Mr. STEVENS would be given an opportunity to call up his amendment after the disposition of the first amendment by Mr. MUSKIE. today. I do not know what happened at that point, but at any rate, this will give Messrs. RIBICOFF and MUSKIE an up-or-down vote on their amendment, and give Mr. STEVENS and Mr. HUDDLESTON an opportunity to present their amendments today. I think that would be a good day's work.

The PRESIDING OFFICER. Is there objection?

Mr. MUSKIE. Mr. President, reserving the right to object, I do need to offer a technical amendment.

Mr. ROBERT C. BYRD. I temporarily withdraw my request.

Mr. MUSKIE. I would like to conclude on the amendment. If it creates any problem, it is simply technical and does not change the substance of the amendment.

The PRESIDING OFFICER. The clerk will state the modification.

The assistant legislative clerk read as follows:

Amendment 486 is modified to read as follows:

Beginning on page 140, line 3, strike all of section 36.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

Beginning on page 140, line 3, strike all of section 36.

Beginning on page 51, line 23, strike "(a)" and all after through "(b)" on page 52, line 17.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the amendment by Mr. MUSKIE and Mr. RIBICOFF occur no later than 4:30 p.m. today. That protects them against a motion to table. If the distinguished Senator from Louisiana objects, I will certainly have no feeling about it.

Mr. JOHNSTON. I have no objection to that.

Mr. DOMENICI. Mr. President, reserving the right to object, I want to take only about 30 seconds of the time that remains.

I do not want to deny you any right to amend the bill, but we do want to make this point: This amendment is an amendment that merely strikes two provisions in the bill.

Mr. MUSKIE. I am aware of that.

Mr. DOMENICI. Well, there is a slight difference in terms of the debate on something that strikes versus a modification. I thought we had made that point, and we did not, in prerogative to our motion to table.

I want to say I am not for tabling it. I want to vote up or down. I do not have a unanimous-consent request; I just want to say there is a difference, to some people, between an amendment and a motion to strike in an amendment.

Mr. MUSKIE. May I say to the Senator, half-way between zero and 10 is five, so you get to five from zero.

Mr. DOMENICI. I understand.

Mr. ROBERT C. BYRD. Mr. President, I am not trying to inject myself into the management of the bill. If the managers want to object, fine. But I do hope we will have an up-or-down vote, which would give the authors of the amendment a feeling that they have had their day in court.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

AMENDMENT NO. 490—AS MODIFIED

(Purpose: To provide for the postponement of new requirements (other than those relating to occupational or mine safety) adopted after the commencement of construction of a priority energy project)

Mr. RIBICOFF. Mr. President, on behalf of the Senator from West Virginia (Mr. RANDOLPH), I send to the desk an amendment or modification of amendment No. 490, to modify the Muskie amendment.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

The amendment follows:

Beginning on page 140, line 3, strike all through and insert in lieu thereof the following:

POSTPONEMENT OF NEW REQUIREMENTS

SEC. 36. (a) The Board by majority vote, is authorized to waive the application of any Federal, State, or local statute, regulation, or requirement enacted or promulgated after the commencement of construction of a priority energy project, for only such time as necessary to allow compliance with such statute, regulation, or requirement with no resultant substantial delay in the completion or commencement of operation of the affected energy facility, but in no event longer than five years. Such waiver may be granted only where (1) the Board finds that the waiver is necessary to avoid a significant delay in the completion and commencement of operation of the facility, and (2) the Administrator of the Environmental Protection Agency has not disapproved such waiver on the basis that it may result in the discharge, emission, or release of any toxic or hazardous pollutant or any other pollutant which may reasonably be anticipated to present a substantial endangerment to the public health or in any other condition which may reasonably be anticipated to present such endangerment, and (3) the Secretary of the Interior has not disapproved such waiver on the basis that it may result in any irretrievable loss of fish or wildlife which cannot be mitigated.

(b) For the purposes of this section, "commencement of construction" means that the owner or operator of a priority energy project has obtained all necessary preconstruction approvals or permits required by Federal, State, or local laws or regulations and either has (1) begun or caused to begin, a continuous program of physical onsite construction of the facility, or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time. For the purpose of this subsection, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether such construction is continuous.

(c) Any extension pursuant to this section may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be extended.

(d) This section shall not apply to or modify in any way—

(1) any law, regulation or rule of law governing labor management relations, pensions, working conditions (including health and safety), or minimum wages and maximum hours of employment;

(2) any law, regulation or rule of law guaranteeing equal employment opportunities or prohibiting discrimination on the basis of race, creed, sex, or national origin;

(3) any law prohibiting any act similar to any crime at common law;

(4) any antitrust law of the United States.

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to get a clarification from the Chair?

Is it the understanding of the Chair that following the disposition of the pending amendment, Mr. STEVENS and Mr. HUDDLESTON will be recognized to call up their amendment next?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. RIBICOFF. Mr. President, giving the Board power to act in lieu of an agency which misses its deadline is an unwise proposal. Specifically, it would:

Lead to complications and inevitable delays in court actions if a court remands a case either to the Energy Mobilization Board or to an agency, to develop a further record for decision; or if a court decides that the Board has improperly applied the relevant law;

Decrease Government accountability by tempting agencies to "pass the buck" to the Energy Mobilization Board on particularly tough or policy-sensitive issues;

Erode the authority of independent regulatory agencies at all levels of government;

Invite abuse of enforcement power for political purposes on decisions affecting large, capital-intensive energy projects; and

Lead to the establishment of a large bureaucracy at the Board which would have to have the expertise to make decisions on a wide range of Federal, State, and local matters.

Senator MUSKIE's and my amendment seeks to eliminate delays in completing vital energy projects by establishing an Energy Mobilization Board to cut through redtape and secure prompt action. One of the major differences between our approach and S. 1308 is how we seek to insure compliance with any schedule the Board establishes for completing action on an energy project. Under the provisions of S. 1308 the Board would substitute its judgment for that of any Federal, State, or local agency which failed to meet a deadline by even 1 day.

Our amendment would instead empower the Board to go to court to obtain a court order, requiring the agency to act if the agency has missed, or appeared likely to miss, a deadline.

Past experience demonstrates that the approach is both workable and effective. It will result in better decisions, less delay, and less intrusion into the workings of other Federal, State, and local agencies. On the other hand, the approach proposed by S. 1308 as it now stands will only result in more delay and more litigation.

The principal import of our approach—and which is contained in part of S. 1308—is to allow the Board which sets the schedules to go to court and obtain a court order directing another agency to conclude its deliberations and decide the matter one way or the other. This remedy is available either when a deadline has already been missed, or when a future deadline is likely to be missed. Impressive precedent for this approach demonstrates its effectiveness and workability. As the District of Columbia Court of Appeals observed, the establishment of time limits "should serve like adrenalin to heighten the response and to stimulate the fullest use of resources." *NRDC* v. *Train*, 510 F.2d 692, 712 (D.C. Cir. 1973).

It is true that there have been instances where courts have been reluctant to adopt or enforce a deadline against an agency. But in these situations, either an inflexible deadline was established by a statute without regard to the particular circumstances of the case, or the court was asked to establish a deadline of its own without the expertise or knowledge the agency itself possesses. Courts have also occasionally resisted adopting a deadline which would force the agency to put one proceeding ahead of another, or otherwise choose between competing priorities.

None of these situations will apply with deadlines set by the EMB. First, the deadline will have been established and monitored by an expert body with the difficulty and importance of the particular proceeding in mind. Second, the court will be asked to enforce a deadline that was adopted only after full consultation with the agency and after consideration of what it can reasonably be expected to do. Finally, the court will be able to rely on the expert judgment of the EMB to tell it whether the agency could reasonably have been expected to meet the deadline and what court action is necessary to insure rapid completion of the proceeding.

It should also be noted that, under the Ribicoff substitute, the EMB will be monitoring the agency action on a continual basis. If EMB determines the need for judicial intervention, it will be able to file suit early in the process, before the agency falls hopelessly behind in its schedule. The court will not be confronted with a situation already doomed, as a realistic matter, to result in considerable delay regardless of what action it takes.

Enactment of legislation establishing an Energy Mobilization Board will establish a clear national policy that certain designated projects should be given top priority by the agencies because of overriding national needs. Thus the court will only be called upon to enforce the deadline which an expert body, the EMB, has already determined is reasonable and necessary and consistent with the overriding national policy established in this act. The court will not be asked to choose on its own between several competing and equally important priorities, as is the usual case when courts are asked to impose deadlines.

One additional factor will further increase the effectiveness of EMB beyond anything experienced to date. Although the right to obtain a court order requiring agency action is well established, many parties and their attorneys are reluctant to seek relief in court from agency inaction for fear of only angering the agency that must act on its request. Since the Board will not be a party but merely seeking to obtain compliance with its schedule, and since it will have the full prestige of the U.S. Government behind it in support of these projects, this will not be a problem.

In contrast, the alternative approach of allowing the Board to take over and actually make decisions for agencies which are tardy will only produce more delay. Almost by definition, the issues raised in these proceedings will be difficult, if for no other reason than that the projects will be large. Unlike the agency with the normal decisional authority, the Board will have no expertise in the areas covered, and will have to pick up in the middle of a particular case and start from scratch. Given those two factors, and assuming that the Board will attempt to do its substantive jobs properly, it is virtually certain that the Board will be unable to issue a reasoned decision in less than the time that the responsible agency could. And, if there is more than one missed deadline at a time, the prognosis for an accelerated decision is even less favorable.

Knowing that the EMB will step in and make a decision for it could also produce delay for another reason. It could lead Federal and State agencies faced with difficult policy decisions to delay their decision until after the deadline. This would shift the responsibility for any unpopular decision to EMB, but only at the cost of considerable delay in obtaining final agency action. S. 1308 would thus achieve exactly the opposite effect than the one intended.

Then, too, any provision giving EMB the authority to make the substantive decision will inevitably create only more litigation. And this will in turn mean only more delay.

The Board would have to apply substantive law with which it is unfamiliar. It may have to apply both State and Federal law. Even assuming the Board can correctly identify the substantive law to be applied, it is a virtual certainty that every decision the Board makes of this kind will be appealed. There will be a real problem of the quality of the Board's decisions if it is called upon to decide a Clean Air Act question one day, a strip mining issue the next, and a local zoning variance the third—and still continue its duties of setting schedules and providing overall monitoring for the program. Given its lack of expertise, decisions of the Board are likely to be reversed far more often than those of agencies who originally had responsibility for making the decision. The Board will then have to spend time to redecide the case. And more delay will result.

Thus, even without considering the undesirable effects of establishing another substantial bureaucracy to make decisions properly left to State or local governments, or to other Federal agencies with the substantive expertise, the procedures in S. 1308 are unwise because they will produce more, not less, delay.

Mr. STAFFORD. Mr. President, proponents of the Energy Committee bill have argued that S. 1308 does not waive the application of substantial Federal, State, or local laws. However, section 36 does empower the Energy Mobilization Board to waive any future Federal, State, or local law, regulation or requirements if "necessary to completion of the priority project in a timely fashion." It is clear to this Senator from the debate, Mr. President, that the so-called "grandfather clause" is directed at new environmental requirements.

What may not be clear is that the grandfather clause may also be applied to a variety of statutes which are not environmental in nature. The only justification that the Board needs to waive such laws is the timely completion of a priority energy project. Senators should realize that the laws of their States can be effectively overturned by a simple finding that the progress of a priority energy project will be slowed down. This clearly, in the opinion of this Senator, empowers the Board to waive a State's energy facility siting law or changes in local building codes. And, to the extent that they would inhibit the progress of a priority energy project, other type of actions prohibited by the grandfather clause may include:

The enactment of a severance tax;

Changes in rates or rate structures for electricity;

Increases in property tax or method of property valuation; or

An increase in royalty or other Government or tribal share of mining revenues.

Clearly, none of these statutes would threaten public health or safety but they could delay a project's completion or otherwise threaten a project's economic viability.

Where waivers are applied to new environmental requirements, I shall repeat the concerns I expressed yesterday, but do so briefly. The grandfather clause fails to recognize that new requirements are often enacted as specific remedial responses to problems which were unknown before the project was begun. Such a prohibition would effectively prevent corrective action needed to protect public health in the environment. Although Senator JOHNSTON's amendment to section 36, which was adopted yesterday permits the Board to impose a lesser requirement, the Board cannot know what those requirements ought to be better than the State or Federal agencies charged with protecting public health and the environment.

Subsection 21(a) which authorizes the Board to substitute its judgment for that of any Federal, State, or local agency, is also a major defect in this bill, in the opinion of this Senator.

This provision may very well cause delays and bad decisions, since the agencies the Board would displace have specialized expertise and experienced staffs. Whatever their failings, they are better qualified to perform the functions assigned to them by law than the Board would be.

The Board would be compelled either to develop its own record and expertise, a time-consuming exercise, or to render an ill-informed, poorly justified decision that would be vulnerable to litigation. Within a few years, with dozens of projects designated, the Board would require an enormous staff to process decisions taken over from a variety of Federal, State, and local agencies involving expertise from land-use planning to toxic waste disposal. The members and chairman would be entangled in the net of their own power, unable to carry out all of their functions. The Board would become the ultimate unresponsive bureaucracy.

Again, Mr. President, we are not just talking about environmental laws; we are not just talking about shortening the time to reach a decision. The grandfather clause empowers the Board—a Federal agency—to interfere in some of the most fundamental powers traditionally reserved by State and local governments.

Therefore, Mr. President, I urge my colleagues to reject the grandfather clause and support the amendment offered by my distinguished colleagues, Senators MUSKIE and RIBICOFF. I hope that vote will come, as planned, at 4:30.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. I ask the distinguished Senator from Maine for 10 minutes.

Mr. MUSKIE. Mr. President, I yield 10 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Chair informs the Senator that there is no time agreement to this amendment.

Mr. WEICKER. Mr. President, I direct my attention toward that portion of the Muskie-Ribicoff amendment which would delete subsection 21(a) of the bill. This subsection would authorize the Energy Mobilization Board to make a decision or take an action in lieu of any agency, whether it be Federal, State, or local, if the agency fails to meet a project decision schedule deadline established by the Board.

Mr. JOHNSTON. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. WEICKER. Yes.

Mr. JOHNSTON. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The pending amendment is the amendment offered by the Senator from Connecticut modifying the existing language.

Mr. JOHNSTON. The Senator from Connecticut?

The PRESIDING OFFICER. Senator RIBICOFF.

Mr. JOHNSTON. Mr. President, we do not have a copy of that amendment. I was informed that another amendment was pending, the Muskie amendment.

A further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. JOHNSTON. I wonder if the Senator from Maine or the Senator from Connecticut intended the so-called Randolph amendment to be in lieu of the Muskie amendment and to be voted on at 4:30 p.m., or whether they intended the original Muskie amendment to be voted on?

Mr. MUSKIE. I am sorry, may I say to the Senator from Louisiana, I did not hear what he was saying.

Mr. JOHNSTON. The question is, if the pending amendment is the so-called Ribicoff amendment, which is a reincarnation, as I understand it, of the Randolph amendment, that now is the pending amendment, is that in lieu of the Muskie amendment for which a unanimous-consent request was ordered for a vote at 4:30?

Mr. MUSKIE. I understood, caught up in the pressures of the request for unanimous consent, that Senator RANDOLPH wanted to modify the first part of my amendment, and, if he succeeded, then the vote would come on my amendment, as modified in the first part. In other words, the motion to strike section 21 would be the second part.

That is what we were contemplating.

Mr. McCLURE. Is it offered as an amendment to the amendment?

Mr. MUSKIE. The difficulty, may I say to the Senator from Idaho, is that the unanimous consent having been agreed to, we are facing the problem of whether any amendment is in order.

I do not know whether that has been worked out. The Parliamentarian has been consulted.

The PRESIDING OFFICER. To inquire of the Senator from Maine, is it his understanding that if the Randolph-Ribicoff language is accepted, that would then result in the second part of his amendment to be acted upon at 4:30, without the first part?

Mr. MUSKIE. I have no objection to that, whether or not that is the parliamentary situation——

The PRESIDING OFFICER. The Chair would inform the Senator, that is what the precedents would require.

Mr. MUSKIE. So if I understand correctly, what I am being asked is whether, if the Randolph amendment is offered to the first half of mine and is accepted, that would resolve the Randolph amendment issue, and the remaining issue would be the second half of my amendment.

The PRESIDING OFFICER. The Senator is partially correct.

Mr. MUSKIE. I would have no objection to that, if that is the Parliamentarian's ruling, as the result of what has taken place.

The PRESIDING OFFICER. The Chair also informs the Senator the language introduced by the Senator from West Virginia and the Senator from Connecticut is to the bill, not to the language of the Senator from Maine's amendment. It would perfect the language that the Senator from Maine would strike and, therefore, takes precedence.

Mr. MUSKIE. What the Chair is saying is that if the Randolph amendment

is adopted it would, in effect, amend the bill and not my amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. MUSKIE. And, nevertheless, it would impact upon my amendment to the extent that all that would be left of my amendment to be voted on at 4:30 would be the second half?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. There is already a unanimous consent entered into by this body that says that the Muskie amendment will be voted upon at 4:30.

If, as a matter of fact, any intervening action interferes with that unanimous consent, is not the intervening action out of order?

The PRESIDING OFFICER. The unanimous consent to vote at 4:30 does not preclude other amendments being offered that have preference.

Mr. McCLURE. Even though the intervening amendments that would otherwise have preference have the effect of vitiating and nullifying the unanimous-consent agreement already entered into by the Senate?

Mr. President, before answering that question and, therefore, making a precedent, I wonder if we might not solve this problem by propounding another unanimous-consent agreement, because I am concerned that if, as a matter of fact, the Chair should rule that it would have the effect of vitiating the unanimous-consent agreement, then unanimous-consent agreements do not mean anything.

I would much prefer to solve the question in a different manner, if, indeed, that is the wish and desire of the Members present.

The PRESIDING OFFICER. The Chair does not——

Mr. McCLURE. Mr. President, I suggest the absence of a quorum so that we might see if we can arrive at such a unanimous-consent request.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER (Mr. BAUCUS). Will the Senator withhold his request?

Mr. WEICKER. Mr. President, I yielded for the purposes of this parliamentary inquiry and debate here. I see no reason why my statement should interfere.

Mr. McCLURE. I withdraw the request.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, although the Muskie-Ribicoff amendment would delete subsection 21(a), it would retain subsection 21(b). This is the provision which enables the Energy Mobilization Board to go into court to seek enforcement of a schedule deadline. Thus, the Board would act as a watchdog over the regulatory process for priority energy projects. The Board will be able to spot early on in the process potential bottlenecks and will be authorized to go into court to force these agencies to meet the reasonable deadlines which they themselves have agreed to.

I might add that this amendment would not necessarily slow down the expedited process contemplated by S. 1308. As the Energy Committee stated in its report on S. 1308:

> In some instances it will be faster and more efficient for the Board to obtain a court order forcing an agency to decide rather than to attempt to make a decision in lieu of the agency.

My objections to subsection 21(a) are founded upon its dubious constitutional validity. In this subsection, Congress is seeking to regulate the activity of States acting in their sovereign capacity.

In the memorandum prepared by the Justice Department on the constitutionality of the administration's proposal for an Energy Mobilization Board—which was cited yesterday by the distinguished Senator from Louisiana, the floor manager of the bill now before us—it was admitted by the Justice Department that the provision for displacement of State and local agency decisionmaking:

> Obviously . . . intrudes on authority presently exercised by state and local officials. Indeed, it could be argued that supplanting decisionmaking strikes at the heart of state and local sovereignty. Nothing is a more integral governmental function than government itself.

Despite this stark admission, the Justice Department attempts to justify this provision on the broad power to act given Congress under the commerce clause, article I, section 8, clause 3 of the Constitution. Additional support is sought in a series of cases that considered constitutional challenges of the Clean Air Act.

However, in discussing the displacement of State and local decisionmaking, the Justice Department does not even discuss the seminal U.S. Supreme Court decision establishing limitations on the congressional power to act under the commerce clause to interfere with the role of the States in the Federal system.

In its 1976 decision in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Supreme Court invalidated extension of the Fair Labor Standards Act's minimum wage and maximum hour standards to State and local governments. The Court stated that:

> We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner. Id. at 845.

In its decision, the Court established a test by which the constitutionality of every attempted commerce clause regulation of State and local governmental activity must be judged. The test has two tiers to determine intrusions on State sovereignty.

First, it must be determined whether the governmental activity being regulated is "essential to the States' separate and independent existence." To identify those governmental functions deserving an affirmative constitutional protection, the Supreme Court used several phrases: "integral"; "traditional"; "essential"; and "functions * * * which (State) governments are created to provide."

Is there any doubt that the State and local activities which the Energy Mobilization Board would be empowered to displace under subsection 21(a) of this bill are those functions which are traditionally relegated to the States? Under the Energy Committee bill, the Energy Mobilization Board is empowered to act in lieu of the State or local agency in such traditional State governmental functions as zoning decisions, land use controls, and safety regulations as they are applied to energy facilities. If the Federal Government is empowered to preempt local zoning decisions, our State and local governments would be reduced to mere appendages of the Federal Government. Clearly, this result would transgress the constitutional scheme.

Having ascertained that the State and local agency activities are "essential to the States' separate and independent existence," the test established in National League of Cities requires an examination of the degree of interference imposed by the Federal regulation. If the regulation either imposes significant financial burdens on the governmental body subject to the regulation or displaces the States' freedom to carry out essential activities, then the Federal Government has unconstitutionally interfered with State sovereignty.

The displacement powers granted the Energy Mobilization Board under S. 1308 empowers it to impose conditions on the State without either relieving the State completely of regulatory responsibility or providing it with feasible alternatives to operating under the Federal dictates. While a State is aware of the deadlines and waivers present in its decision schedule before it embarks on its regulatory process, it is not, as a practical matter, given the option of not initiating the process so as to avoid the deadlines. It must start the process, hoping to comply with the schedule; if not, the process is prematurely ended and Federal decisionmakers take over.

Because a State cannot be expected to abandon such traditional and essential functions as zoning, land-use control, and health and safety regulation, it must enlist its regulatory resources each time with the possibility of premature termination of the process, together with its attendant waste of State money and personnel time.

The two prongs of the National League of Cities test are satisfied by the provision in S. 1308 empowering the Energy Mobilization Board to act in lieu of State and local agencies. Thus, the provision is an unconstitutional intrusion by the Federal Government into an area sovereign to the States.

I might add that the Justice Department's reliance on the courts of appeals decisions in the so-called Clean Air Act cases is misplaced. Simply put, the Courts of Appeals of the Fourth, Ninth, and District of Columbia Circuits in these cases rejected an interpretation of the Clean Air Act which would force States to enforce implementation plans by en-

acting statutes or regulations, or face the possibility of compliance decrees or civil or criminal penalties. As the court stated in *EPA* v. *Brown*, 521 F.2d 827, 839 (9th Cir. 1975), to adopt such an interpretation of EPA's enforcement powers "would authorize Congress to direct the States to regulate any economic activity that affects interstate commerce in any manner Congress see fit. A commerce power so expanded would reduce the States to puppets of a ventriloquist Congress." It may similarly be argued that to enable the Energy Mobilization Board to step in for State or local agencies would make the States muppets. Therefore, the Board should not be given the authority to displace State and local agency decisionmaking.

Mr. President, the points I have tried to raise in this presentation are made for the purpose of getting an expedited energy policy worthy of consideration by my colleagues. If legislation passed here this afternoon is unconstitutional, then, believe me, we will have set back for years, not weeks or months, the very cause which is espoused on the floor by the advocates of this legislation.

Clearly, in my mind, subsection 21(a) and another section, to which I will refer later, during deliberation of this matter put the legislation into constitutional jeopardy.

The decision has been rendered by my colleagues that we are to have this Board. I have no doubt that it is going to pass.

It is solely my intent here this afternoon to see to it that what we do here today is constitutional. I want to insure that the legislation does not provide the basis for endless lawsuits, possible ending up with a victory by those who oppose the Board, thereby necessitating starting the entire legislative process all over again. With regard to subsection 21(a), I hope my colleagues will support the amendment as offered by the Senator from Maine and the Senator from Connecticut.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, while we are at ease, I would like to take a moment to comment on what I believe to be the pending amendment.

I am unclear as to the parliamentary situation, but the amendment I want to speak to is the so-called Muskie amendment, on which we are going to vote at 4:30.

As the bill has come to us from the committee, it really tramples on the ancient, honorable concept of States rights. The issue of States rights in this Chamber may seem quaint to some, but I do not want to let the occasion go by without letting the Senate know that there are still a few of us who think the idea of leaving to the States a broad area of discretion is a good idea, and to remind Senators that, as a matter of law, even in this era, our courts have said that there are large areas of day-to-day life which the Federal Government may not invade.

I recall that, a while back, Congress enacted a statute which purported to regulate the wages and hours of State and municipal employees. I was one of those who voted against it, because I believed it violated the constitutional prohibitions on the scope of the National Government's power as against the States; and I was pleased when the Supreme Court upheld that position. I think it may be, as a matter of law, that this bill goes too far and invades that area of States' rights.

However, there is a far more urgent and practical and somewhat less academic reason why I hope the Muskie amendment will be adopted, and it is simply this:

First of all, there really has been no serious effort to show, no real showing, that it is the States which are holding up the development of energy projects. I am aware that there are some instances, particularly in the siting of refineries, in some pipeline issues, and I understand that a couple of States have particularly poor records of expediting needed energy projects.

However, by and large, the evidence is exactly the opposite, that it is not the State and local jurisdictions which are throwing road blocks in the way of pipelines and coal leases and oil and gas drilling permits in the development of coal and oil shale and all the other things we need for the Nation's energy future; it is the agencies of the Federal Government itself. I do not think we should lose perspective, that by implication we should pass the buck to State and local jurisdictions.

I would like to share a couple of episodes in my own State of Colorado that underscore the problem that is going on. At this point, I would like to insert in the RECORD four specific instances—the facts concerning four specific instances—of delays, truly unconscionable delays, in the development of energy projects in my State of Colorado.

I will take the time of the Senate to mention just one, which is of particular significance and is symbolic of a very widespread problem.

Coal Fuels Corp., a Colorado coal mining firm, has a coal operation on 440 acres of private land in western Colorado. This company applied for leases on adjacent Federal lands to continue their operation and in 1968 preference right lease permits were granted.

The lands were prospected, drilled, and commercial quantities of coal were established. All necessary paperwork, detailed mine plans, maps, and reserve calculations were submitted. The operation on Federal lands would be an underground mine, affecting less than 50 surface acres.

At present, the company has driven three entries into the private lands and had to terminate this mine development at the boundary of the Federal land because the preference right lease has not been issued.

It has been more than 10 years since the permits were first granted and the company has invested approximately $5 million in this project. They are still waiting.

I stress this has not been denied. It simply has not been acted on.

I say to my friends this is not an isolated case. I will now send to the desk and ask unanimous consent that some other instances which we have documented in Colorado be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WYOMING FUEL COMPANY

Small mine operation will shut down because of delays in processing of lease application.

Wyoming Fuel Company has a small coal operation in Colorado, mining 640 tons per day and a payroll of 16 employees. The company knew it needed additional coal reserves to sustain coal sales and in March of this year they applied to the Bureau of Land Management (BLM) for a short term criteria lease on federal lands adjacent to their current operation.

Their application was reviewed by BLM and found complete. BLM then turned the application over to the United States Geological Survey (USGS), for its review. USGS said they would have to drill to test reserves and the company offered to do this with its rig to expedite the process. However, USGS used its drill rig and took seven weeks to drill two holes, each 150 feet deep. The normal time for a company rig for this operation would be about four days. (It was reported that the USGS rig had a flat tire and the entire rig was hauled into town to have the flat fixed!)

Another 12 weeks went by before USGS returned the application to BLM for further processing . . . now late August of this year.

BLM then notified the company that new regulations on short term criteria coal leases had been put into effect July 19, 1979 and a new reserve study would be necessary.

As of this date, BLM is preparing an environmental assessment on the property with the possibility that a lease could be issued by February 1980 at the earliest. Which is fine because by that date the company figures it will be completely out of coal and will shut down.

But, after the lease is issued, a total mining plan will have to be submitted to the Office of Surface Mining (OSM), the USGS, the BLM, and Colorado state agencies. According to OSM regulations, only after this plan is approved can mining begin. It is estimated that this approval process will take at least another 6 months. So at best this company will not begin operations until August of 1980. By then the company will have been shut down for six months and 13 of the 16 employees laid off.

SHERIDAN ENTERPRISES, INC.

Federal agencies quick to stop production, slow to approve.

Sheridan Enterprises, Inc., a Colorado coal mining company, had been issued an approved exploration plan in December of 1976 to mine on four separate sites on its issued federal leases. The company was proceeding with this operation when in June of 1979 they were notified by the United States Geological Survey that their approved plan was no longer valid and it had been determined that the production exceeded exploration. With the same notice, the company was given two weeks to resubmit a complete plan for its operations to the Office of Surface Mining or face a cease and desist order.

The company recently submitted seven copies of a mine permit application to the

Office of Surface Mining in Denver, Colorado. The Office of Surface Mining in turn distributes copies of this application to other federal agencies for their review.

At the same time, Sheridan Enterprises submitted separate copies of the application to the Mined Land Reclamation Board of the State of Colorado for their review. Before all the federal agencies have even received from OSM the distributed copies of the application, the state agency had advised Sheridan that the permit submittal was considered complete and a hearing was scheduled before the Mined Land Reclamation Board.

The Colorado Mined Land Reclamation Board is operating under a state statute which limits the period of time that a state agency has to review and determine if an applicant's permit is complete or incomplete. There is no comparable federal statute limiting the period of time a federal agency has to review an operator's mine permit application.

COAL FUELS CORPORATION

Coal company waits 10 years for lease.

Coal Fuels Corporation, a Colorado coal mining firm, has a coal operation on 440 acres of private land in western Colorado. This company applied for leases on adjacent federal lands to continue their operation and in 1968 preference right lease permits were granted.

The lands were prospected, drilled, and commercial quantities of coal were established. All necessary paperwork, detailed mine plans, maps and reserve calculations were submitted. The operation on federal lands would be an underground mine, affecting less than 50 surface acres.

At present, the company has driven three entries into the private lands and had to terminate this mine development at the boundary of the federal land because the preference right lease has not been issued.

It has been more than 10 years since the permits were first granted and the company has invested approximately $5 million in this project. They are still waiting. And, if they could proceed today, it would still take another three years to get major production established on this property.

PARAHOE

Environmental Impact Statement for oil shale company delayed 4 years.

Since 1971, Parahoe has been involved with various private and government funded oil shale demonstration programs on the Anvil Points oil shale research facilities located on the Navel Oil Shale Reserve near Rifle, Colorado. Following their initial demonstration program, Parahoe has been seeking funding from various sources in order to design, build and operate a full sized module.

The Energy Research and Development Administration (ERDA), in 1975, determined that such a project, because of the increased mining and increased shale retorting, required a site of specific EIS. In testimony before the Senate Energy Committee's Subcommittee on Energy and Materials Production, Mr. Harry Pforzheimer, Parahoe project director, said ERDA promised the draft EIS would be completed within six months.

Now almost four years later a draft EIS has not been completed for release to the public and the interested Federal agencies. As a result of this delay, Parahoe no longer has enough time remaining under their Anvil Points lease to permit the construction and operation of such a module. To continue their work, Parahoe has sought to extend the Anvil Points lease, but the Department of Energy (DOE) has determined that such a request is "premature."

OSGOOD

Oil and gas drilling still pending in New Mexico after 4-year delay at Bureau of Indian Affairs (BIA), and now the USGS, to possible detriment of Navajo Indian allottees.

In August 1975, Charles E. Osgood, Denver, Colorado, requested that several allotments be advertised by the BIA for leasing bids. In March 1979, 3½ years later, the allotments were advertised for bids. At present, the commencement of drilling is pending USGS approval. Over the four year delay the individual Indians have been denied substantial royalty payments and have been subjected to possible depletion of their oil and gas deposits.

MESA PETROLEUM INC.

Leasing of land still pending in New Mexico after 2½ year delay at BIA, to possible detriment of Navajo Indian allottees.

This Denver, Colorado company requested that several allotments be advertised by the BIA for lease bids. This was a written request dated December 2, 1976. The allotments are not subject to drainage but the Indian allottees desired to lease the land to receive royalty payments. To date, the BIA has refused to act, citing administrative convenience.

Mr. ARMSTRONG. Let me also point out that the instances which have been printed in the RECORD are by themselves by no means a catalog of the horror stories which we have in our files and which I believe other Senators also could vouch for.

I am told by my friends in Utah that there is a tar sands fuel operation which is ready to go and which has been petitioning for sometime to get the necessary Federal lease approvals.

In New Mexico they tell me that there has not been a new coal lease granted by Federal authorities in over 3 years.

My friends from Wyoming have indicated to me that the same situation exists there. In fact, one of the Senators from Wyoming said within my earshot they had so much coal up there that they could supply half the country and yet they cannot get a coal mine operation going because Federal officials will not get off the dime.

The relevance of this to the Muskie amendment is very simple. The bill addresses itself to two issues: First, Federal redtape; second, very improperly in my judgment, to an imposition of Federal control over local processes. I object to the Federal interference in the State and local process because, first, there has not been any real showing that energy development has been significantly slowed by State and local jurisdictions; second, because if the Energy Mobilization Board actually undertook to live up to the mandate of the bill as it is now written it would have to acquire the expertise which now resides in State and local jurisdictions in order to fulfill that mandate.

I think they would end up actually slowing rather than expediting the process of energy development to the extent that they actually sought to exercise the option of preempting State and local jurisdictions.

Last but not least, I hope this amendment, which has been proposed by the Senator from Maine, will be adopted because, frankly, I think any time we have a chance to leave something to State and local officials we are better off.

I have had contact over the years with a lot of State legislators and a lot of county commissioners. My experience with them is they are knowledgeable, they are well informed, and as it relates to their own jurisdictions they are far better informed than any national legislator or national body could be.

In the bill we have a proposition which says that we are going to preempt these responsible local elected officials and that the preempting agency will be an appointed board. So to me on every ground, on legal grounds, on practical grounds, and just on the kind of cooperative and mutually respectful relationships that should obtain between the Federal Government and the State government it seems to me that the bill goes too far and intrudes too much on States' rights. So for that reason I am going to vote for the Muskie amendment.

At least, Mr. President, if the parliamentary situation is such that I am permitted to do so that is my intention.

While I still have the floor may I address to the Chair this inquiry: What was the resolution of that issue? Will we vote at 4:30 p.m., on the Muskie amendment?

The PRESIDING OFFICER. Under the unanimous-consent agreement the vote will occur at 4:30 p.m. on the Muskie amendment. However, the amendment offered by the Senator from Connecticut takes precedence over the amendment by the Senator from Maine. Therefore, under the present situation the vote will first occur on the amendment offered by the Senator from Connecticut (Mr. RIBICOFF).

Mr. ARMSTRONG. I thank the Chair, and I yield the floor.

Mr. MELCHER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I think we have worked out an agreement which may take a couple of minutes to draw and about 5 minutes to explain. So I, therefore, ask to vitiate the unanimous-consent order for the 4:30 p.m. vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is that in order?

The PRESIDING OFFICER. There are two amendments pending, the amendment offered by the Senator from Maine and also the amendment offered by the Senator from Connecticut.

Mr. MELCHER. Mr. President, I ask unanimous consent that the pending amendments be set aside temporarily.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, will the Senator be agreeable to making that no longer than 5 minutes.

Mr. MELCHER. No longer than 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 596

Mr. MELCHER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 596:

Add a new subsection (d) to section 11 on page 35, as follows:

"(d) No project shall be designated a priority energy project unless the Board determines that the applicant for priority status has taken reasonable steps to apply for all necessary approvals from State and local agencies and a copy of the applicant's designation request has been given to the Governor of every State in which the project or any portion thereof would be located."

Mr. MELCHER. Mr. President, this amendment simply ends one question-mark in the bill and that is, Will the States start to act at the same time the Board starts the time frame running on a priority project? It is something that the States would like. It is something that would clarify that particular point in the bill, and I hope the managers will accept the amendment.

Mr. DOMENICI. Did the Senator ask that his amendment be adopted?

Mr. MELCHER. Yes.

Mr. DOMENICI. We have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana.

Mr. JOHNSTON. Mr. President, will you withhold that so that I can get a copy of the amendment?

Mr. President, this is the amendment which we had discussed with the Senator from Montana, as drafted, and it simply insures that prior to designation as a priority energy project that the applicant will have taken reasonable steps with the State and local permitting agencies to put them on notice prior to seeking the designation, so we have no objection.

The amendment was agreed to.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Under the previous agreement is it now in order for me to offer my amendment?

The PRESIDING OFFICER. No. The question now recurs on the amendment offered by the Senator from Connecticut.

Mr. JOHNSTON. Mr. President, I send an amendment to the desk, if it is in order to send an agreed amendment, in lieu of the amendment of the Senator from Connecticut on behalf of myself, the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from West Virginia (Mr. RANDOLPH), and I would like to send it to the desk and ask for its immediate consideration.

VISIT TO THE SENATE BY TWO MEMBERS OF THE ITALIAN PARLIAMENT

Mr. DOMENICI. Mr. President, would the Senator from Louisiana withhold until I introduce two parliamentarians visiting here?

Mr. JOHNSTON. Yes.

Mr. DOMENICI. Mr. President, there are two parliamentarians from Italy, Mario Usellini, and Mario Segni. They are our guests, and we have been privileged to have them here on the floor watching this particular parliamentary procedure this afternoon.

I would like to introduce them and give the Senators a minute to meet them and say hello.

RECESS

Mr. DOMENICI. I ask unanimous consent that we stand in recess for 1 minute while the Senators have an opportunity to greet Mario Usellini and Mario Segni. We welcome them.

[Applause.]

There being no objection, the Senate, at 4:33 p.m. recessed until 4:34 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BAUCUS).

PRIORITY ENERGY PROJECT ACT OF 1979

The Senate continued with the consideration of S. 1308.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

UP AMENDMENT NO. 597

Mr. JOHNSTON. Mr. President, I propose an amendment which is at the desk as a substitute for the pending Ribicoff amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and others proposes an unprinted amendment numbered 597.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be disposed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the language intended to be proposed by Mr. RIBICOFF No. 490 (as modified) insert the following:

POSTPONEMENT OF NEW REQUIREMENTS

SEC. 36. (a) The Board, by majority vote, is authorized to waive the application of any Federal, State, or local statute, regulation, or requirement enacted or promulgated after the commencement of construction of a priority energy project, such time as necessary to allow compliance with such statute, regulation, or requirement with no resultant substantial delay in the completion or commencement of operation of the affected energy facility. Such waiver may be granted only where (1) the Board finds that the waiver is necessary to avoid a significant delay in the completion and commencement of operation of the facility, and (2) the Administrator of the Environmental Protection Agency has not disapproved such waiver on the basis that it may reasonably be expected to result in the discharge, emission, or release of any toxic or hazardous pollutant or any other pollutant which may reasonably be anticipated to present a substantial endangerment to the public health or in any other condition which may reasonably be anticipated to present such endangerment, and (3) the Secretary of the Interior has not disapproved such waiver on the basis that it may result in any irretrievable loss of fish or wildlife which cannot be mitigated. This section shall not apply to any requirement or regulation under the Federal Mine Safety and Health Act of 1977 or the Occupational Safety and Health Act of 1970.

(b) For the purposes of this section, "commencement of construction" means that the owner or operator of a priority energy project has obtained all necessary preconstruction approvals or permits required by Federal, State, or local laws or regulations and either has (1) begun or caused to begin, a continuous program of physical onsite construction of the facility, or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time. For the purpose of this subsection, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether such construction is continuous.

(c) Any waiver pursuant to this section may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be waived.

(d) This section shall not apply to or modify in any way—

(1) any law, regulation or rule of law governing labor management relations, pensions, working conditions (including health and safety), or minimum wages and maximum hours of employment;

(2) any law, regulation or rule of law guaranteeing equal employment opportunities or prohibiting discrimination on the basis of race, creed, sex, or national origin;

(3) any law prohibiting any act similar to any crime at common law;

(4) any antitrust law of the United States.

(e) The Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review any waiver or veto of a waiver pursuant to this section in accordance with the procedures for expedited review established by this Act.

Mr. JOHNSTON. Mr. President, this amendment is offered as a substitute in order to try to mollify the concerns with respect to, and to accommodate to the concerns of, Senator MUSKIE, Senator RIBICOFF, and Senator RANDOLPH, and others with reference to the grandfather clause.

What it does is to allow the Board by majority vote to waive the application of any State, Federal, or local statute, regulation or requirement enacted or promulgated after the commencement of construction of a priority energy project for only such time as is necessary to allow compliance with such statute, regulation, or requirement with no resultant substantial delay in the completion or commencement of operation of the affected energy facility.

Let me explain that first part initially, and that is the Board may waive a State, local, or Federal statute enacted after the commencement of construction for only so long as to allow no resultant substantial delay in the completion or commencement of operation of the energy facility.

It further provides that such waiver may be granted only where the Board finds that the waiver is necessary to avoid a significant delay in the completion and commencement of operation of the facility.

Further, that the Administrator of the Environmental Protection Agency has

not disapproved such waiver on the basis that it may be reasonably expected to result in the discharge, emission, or release of any toxic or hazardous pollutant or any other pollutant which may reasonably be anticipated to present a substantial endangerment to the public health or in any other condition which may reasonably be anticipated to present such endangerment.

Further, that the Secretary of the Interior has not disapproved such waiver on the basis that it may reasonably be expected to result in any irretrievable loss of fish or wildlife which cannot be mitigated.

What this means, Mr. President, is that in those instances which the Senator from Maine described this morning where some new condition arises after the commencement of construction, the discovery, for example, of the discharge, emission or release of a toxic or hazardous substance, where EPA should find that such discharge may reasonably be expected to result in endangerment to public health, then EPA may veto that waiver, and that veto is a forever veto, that is, it is not subject to the clause first mentioned that it be in existence only for such time as to allow compliance but, rather, that veto, if made under the conditions described, is a permanent veto.

That veto, either by the Environmental Protection Agency with respect to matters of public health or the veto by the Secretary of the Interior with respect to fish or wildlife, is also subject to appeal to the Temporary Emergency Court of Appeals.

The language on appeal reads as follows:

> The Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review any waiver or veto of a waiver pursuant to this section in accordance with the procedures for expedited review established by this act.

So it means that the waiver or the veto of a waiver shall be subject to expedited review in the TECA court.

Mr. President, the amendment goes on to define commencement of construction as in the original amendment, and it goes on to also state that any extension or should I say any waiver pursuant to this section may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be waived.

What that means, of course, is that if the State—say a State should enact a law which is the kind of ex post facto law we are trying to get at in this grandfather clause, but the Board finds that an allowance in part of the requirements of the law does not do violence to the construction schedule, then they can put in part of the requirement or some alternative requirement, in the discretion of the Board.

The amendment also makes clear that the section shall not apply to or modify in any way labor-management relations laws, pensions, working conditions, minimum wages, maximum hours of employment, equal opportunity, discriminatory laws on race, creed, sex, or national origin, any law prohibiting an act similar to a crime at common law, or antitrust regulations.

Frankly, Mr. President, the modified amendment which I have just submitted goes a little bit further than I would like, because such phrases as "may be expected to result in harm to the public health" could perhaps be more broadly construed than I would like.

Nevertheless, it carries out what has been our intention all along, and that is to waive these ex post facto laws except where there is a clear and present danger to public health.

The Senator from Maine has eloquently brought out that danger, and this amendment is an attempt to accommodate to his purposes on not protecting the public health. We want to protect the public health, and I think this amendment carries that out.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield to the distinguished Senator from Maine.

Mr. MUSKIE. I would like, first of all, to express my appreciation to Senator RANDOLPH, who is the original author of this modification which has been modified further somewhat, but the essence of what he proposed is here.

Second, as in the case of most compromises, this does not deal with all of the implications of the committee bill which have troubled me and which I have described here today, but this is the principal problem I found with the committee bill and the grandfather clause, that is, that if unanticipated pollution effects occurred after construction of a project, there ought to be clear authority to deal with them. This does provide clear authority.

Of course, there must be a finding that emissions would reasonably result in substantial endangerment to the public health, in accordance with the criteria here, but nevertheless there is authority to deal with such unanticipated pollution risks.

Recognizing the need for a compromise at this point, I was delighted to collaborate with Senator RANDOLPH, principally, and Senator RIBICOFF, Senator JOHNSTON, and others, in the development of this compromise.

On this point, I think it is appropriate that Senator RANDOLPH speak for himself, rather than through me.

Mr. DOMENICI. Mr. President, does the Senator from West Virginia have the floor?

Mr. ROBERT C. BYRD. Mr. President, will my distinguished senior colleague yield to me for a unanimous-consent request?

Mr. RANDOLPH. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the disposition of the Stevens amendment and the Huddleston amendment, the Senator from New Jersey (Mr. BRADLEY) be recognized to call up an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, reserving the right to object, may I inquire if it is possible to fix a time for the vote on the Muskie amendment? We did have 4:30. That was vitiated by this effort to separate the issues in the Muskie amendment. I would like to see if we could get a time certain to dispose of the Muskie amendment; that would trigger the Huddleston amendment and my amendment.

Mr. ROBERT C. BYRD. Mr. President, would it be agreeable that the Senate vote at 5 o'clock on the amendment by Mr. RIBICOFF and perhaps Mr. RANDOLPH?

Mr. JOHNSTON. Mr. President, if anyone requires a rollcall vote on that, I do not know of it. I would not require a rollcall vote.

The PRESIDING OFFICER. The Chair would inform the Senator that the pending amendment is the Johnston amendment to the Ribicoff-Randolph amendment.

Mr. DOMENICI. Mr. President, reserving the right to object, at this point we are not expected to have an up-or-down vote on this one, are we?

Mr. McCLURE. Mr. President, if the Senator will yield, this Senator expects to.

Mr. DOMENICI. I mean we had not up to this point.

Mr. McCLURE. Well, we do now.

Mr. ROBERT C. BYRD. Very well. Could we begin voting on the Johnston amendment at 5?

Mr. JOHNSTON. If the Senator will yield, I wonder if the Johnston amendment to the Ribicoff-Randolph amendment could be adopted, and then vote on the Randolph-Ribicoff amendment as amended by the Johnston amendment?

Mr. McCLURE. Mr. President, I suspect the Senator from Connecticut would allow his amendment to be modified by the Johnston amendment, and I would have no objection to that, but I think there ought to be a rollcall vote on that amendment as so modified.

Mr. ROBERT C. BYRD. Then I ask unanimous consent that a vote occur on the amendment by Mr. RIBICOFF on behalf of Mr. RANDOLPH, as modified if modified, at 5 p.m. today.

Mr. McCLURE. Mr. President, reserving the right to object, I think that is reasonable, but I would hope the Senator from Idaho could be recognized for 5 minutes somewhere within that time.

Mr. ROBERT C. BYRD. I modify that request to make it 5 minutes after 5, with the additional time to be allotted to Mr. McCLURE.

The PRESIDING OFFICER. That the vote occur on the amendment as amended, or as modified?

Mr. ROBERT C. BYRD. As amended or modified, in either event, and that upon the disposition of that amendment, the Senate vote on the second half of the Muskie amendment immediately, and there will be rollcall votes on those amendments. I ask unanimous consent that the second vote be a 10-minute rollcall vote.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, reserving the right to object, I wonder if we could have 10 minutes of debate, 5 minutes on the side, on the second half of the Muskie amendment.

Mr. DOMENICI. Reserving the right to object, I would like to be assured of 5 minutes on the second half of the Muskie amendment and the Johnston modification.

Mr. ROBERT C. BYRD. Make it 15 minutes, with 5 minutes to Mr. DOMENICI.

The PRESIDING OFFICER. The Chair would inquire of the Senator, if the Ribicoff-Randolph amendment is not agreed to, does the Senator wish a vote to occur on the whole Muskie amendment?

Mr. ROBERT C. BYRD. Yes; I am glad the Chair made that observation on the distinction.

I ask unanimous consent that the vote occur on the Johnston amendment at 5 minutes after 5, with the time up to 5 o'clock being equally divided in accordance with the usual form, and the remaining 5 minutes to be under control of Mr. MCCLURE; that if that amendment is adopted, the vote occur after 15 minutes of debate, with the time to be divided in accordance with the usual form in connection with the first 10 minutes, with the last 5 minutes to Mr. DOMENICI, and that the vote then occur on that amendment.

Mr. JOHNSTON. Mr. President, reserving the right to object, I think the Senator meant to say that the vote would occur on the Ribicoff amendment as modified, if modified; is that correct?

Mr. ROBERT C. BYRD. No; I had already passed that point. Let me restate the request.

I ask unanimous consent that the vote occur at 5 minutes after 5 on the amendment by Mr. JOHNSTON, the time to be equally divided in accordance with the usual form with respect to the first 10 minutes, the last 5 minutes to be under Mr. MCCLURE's control; and if that amendment is agreed to, then the vote occur on the Ribicoff-Randolph amendment 15 minutes after that time, with 10 minutes to be equally divided and 5 minutes to be under the control of Mr. DOMENICI. Is that correct?

Mr. JOHNSTON. Mr. President, reserving the right to object, I do not think it is necessary to vote on the Johnston amendment but, rather, on the Ribicoff amendment as modified, if modified.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, I ask unanimous consent that the vote occur at 5 minutes after 5 on the Ribicoff amendment as modified or amended by the Johnston amendment, the 10 minutes of that time to be under control as in the usual form, with the last 5 minutes to be under Mr. MCCLURE's control; then, if that amendment is adopted, that the vote then occur on the second part of the Muskie amendment within 15 minutes after that, 10 minutes under control as in the usual form and 5 minutes under Mr. DOMENICI's control.

Mr. DOMENICI. Reserving the right to object.

Mr. ROBERT C. BYRD. And that, in the alternative, if the Randolph amendment is objected to, the vote occur within 10 minutes after the disposition of the Randolph amendment on the entire Muskie amendment, the time to be divided in accordance with the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, Mr. President, is there some way the Senator can modify that to put my 5 minutes in with Senator MCCLURE's on the first part? I do not want 5 minutes after the amendment has been adopted if adopted. I want it on that one.

Mr. RANDOLPH. That is OK with me.

Mr. ROBERT C. BYRD. Fine. I make that adjustment, Mr. President, that the vote occur at 10 minutes after 5, with Mr. DOMENICI having 5 minutes under his control.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I now ask to put the question on the Johnston amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana (Mr. JOHNSTON.)

The amendment was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. Mr. President, I yield myself such time as I may need.

Mr. President, this is, to say the least, a rather involved situation. I do want to say for the RECORD, and I shall speak very briefly, that, as Senator MUSKIE knows, the original amendment which I presented was not hastily drafted. It was an amendment on which I had worked, and it was printed and was at the desk. It is not something that evolved here, in the Senate, itself.

I was trying very much to take a middle ground. I have done that often in the Senate. I was troubled with the problems that Senator MUSKIE had and the problem that Senators JOHNSTON and DOMENICI have had.

Mr. President, I am troubled by the provisions of S. 1308 which allow the Board to waive substantive requirements of State, local, and Federal law adopted after a priority energy project begins construction. Even with the midifications offered yesterday by Senator JOHNSTON, section 36 of S. 1308 is essentially still a device to immunize energy projects from regulation in perpetuity, no matter what advances are made in knowledge.

In a very fine letter, the League of Women Voters pointed out:

> Environmental laws and regulations are not luxuries we can do without: They are vital to the health and welfare of our people. . . . Discovery of new problems will require application of new solutions. Energy projects should not be exempt from those solutions.

Of course, not only environmental laws could be waived under the Energy Committee bill. Severance taxes, siting requirements, economic mitigation measures such as public facility dedication requirements—all could be waived.

I understand, however, that many Senators are concerned about the problems that changing the rules after construction starts could create for critical energy facilities. Therefore, I am offering amendment 490 as a middle ground between the unacceptable waiver provisions of S. 1308 and the complete absence of any protection from later-imposed requirements. I have modified the amendment to reflect some of the improvements put forward yesterday by Senator JOHNSTON.

My amendment would allow a majority of the Board to extend the time for compliance with any requirement imposed after construction commences which would otherwise cause a significant delay in the completion of a priority energy project. This is preferable to a complete waiver. The extension would last only as long as necessary to phase in compliance without any significant delay in startup for the energy facility, up to 5 years.

In addition to the Board's finding that the waiver is necessary to avoid delay, the Administrator of the Environmental Protection Agency can veto the waiver if it may reasonably be expected to result in the release of any toxic or hazardous pollutant or in a condition which "may reasonably be anticipated to present a substantial endangerment to the public health." These are words with defined meaning, used in the Solid Waste Disposal Act and the Clean Air Act.

Also, the Secretary of the Interior can veto the waiver if it will cause an irretrievable loss of fish or wildlife which cannot be mitigated.

I have incorporated the exemptions for labor and occupational safety laws, civil rights laws, and antitrust laws suggested in the Johnston amendment.

The definition of "commencement of construction" is modified to prevent simple earthmoving or site clearance from qualifying a facility for the protection of this section. The test really should be whether the owner has expended so much effort, time, and expense that he cannot modify his program of construction without substantial loss.

For those who are seeking a reasonable way of protecting priority energy projects against the disruption of later enacted requirements, I offered this amendment.

First of all, I think the characterization by the floor manager on the majority side of this legislation is correct. I could talk further about it, but I think that he has characterized it in a reasonable fashion.

I commend Senators DOMENICI and MCCLURE upon their steadfastness to something that they believe in connection with an alleged deficiency in the modification which has been made. Certainly, the record is proof positive that no one in the Senate has been more interested over a longer period of time and has helped to develop legislation, with Senator DOMENICI and others in more recent days and months, than the Senator from West Virginia who now speaks. I refer to synthetic fuels. It is my feeling that what we have done in the modification from the original amendment would not in any way stop the construction of synthetic fuels plants.

I know that Senator DOMENICI and Senator MCCLURE feel otherwise. But I do not think that that is going to happen. If I felt so, I would stand here, and I have never engaged in a filibuster, but I would filibuster now if under the rules I could do so.

We must use judgment in a matter of fears are not grounded in fact, that there

will be a way to proceed reasonably, without violence to health and safety in the United States of America, or the pushing into the background of the environmental considerations of which I am very conscious. I believe that now, we have an opportunity to proceed with synthetic liquid fuel production, which we have worked for, in a reasoned manner.

I have tried to take the middle ground, but in doing so, I have not attempted to withdraw from something that I believe in very much. I am on the ramparts for synthetic fuels development. I am not within the recesses, somewhere back there. But there comes a time, I say to my dear friends, when I think we have to compromise.

Sometimes our differences can become our strengths if we try, in this body, to bring a modification of an amendment previously offered.

I was troubled as to the original amendment. I want to proceed with the construction of synthetic fuels facilities. I want health and safety and the environment to be very much a part of that proceeding, and it can be.

The PRESIDING OFFICER. The time of the Senator from West Virginia has expired.

Mr. RANDOLPH. I thank my colleagues.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, Senator RANDOLPH indicated that he would not want to be part of anything which might seriously jeopardize the future construction of a synthetic fuel plant—at least, from the standpoint of this Board and its authority-making. It is reasonably certain from the outset that a plant can be built.

Let me say to my good friend from West Virginia, I do not know if this amending language does that or not. But having said that, the mere fact that I am not sure it does and I am not sure it does not, I submit, means that there will not be any bill. I regret to say that, because, what is going to happen—and I shall just ask anyone here with any kind of business judgment to advise a corporate board or the public sector that they should commence a plant that would cost $3 billion and take 9 years to build when a State or the Federal Government can come along at any time during its construction and pass a law that might very well stop its construction so long as they find that—and I am going to read the language. I say to the Senator from West Virginia, because I just want to say that it is very uncertain to me and I think uncertainty is what precludes them from being built.

It says that so long as "EPA has not disapproved on the basis that it may reasonably result in the discharge, emission, or release of any toxic or hazardous pollutant or any other pollutant which may be reasonably anticipated to present a substantial endangerment to the public health or in any other condition which may reasonably be anticipated to present such endangerment."

Senator JOHNSTON may be right. That may end up being construed to mean that there is a real danger to the public health. I submit it may be interpreted to mean any toxic substance which a synthetic fuel plant may emit, which we do not know about, so "it may reasonably be expected to release any toxic substance which may be reasonably anticipated to present a substantial endangerment to the public health" probably means it is so uncertain that you would not tell anyone to invest $3 billion.

Mr. RANDOLPH. If my able colleague will yield, I do not want to break the continuity——

Mr. DOMENICI. I am really finished, I say to my good friend. I am not going to make a big issue out of this.

I truly hope it means what the Senator thinks it means, because if it means what the Senator thinks it means, we are all right. If it means what I have seen courts interpret language like this in the past to mean, then I submit they will not make the first investment.

They may take 3 to 4 years to interpret this and it may come out what the Senator thinks. But the point is that at the beginning we have to be told about the uncertainties.

I am asking whether an attorney will tell somebody this really means that only if they pass a law, and if that law finds that the plant is truly dangerous to the public health, they will have to stop, and should stop, Mr. President, they say to them.

But I will say this does not mean that nobody knows what it means. So I am afraid we are back into the unexpected.

I yield whatever time——

Mr. RANDOLPH. One minute.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

Mr. RANDOLPH. Forty-five seconds.

Mr. DOMENICI. How much time does the Senator from New Mexico have?

The PRESIDING OFFICER. The Senator from New Mexico has 35 seconds.

Mr. DOMENICI. I yield my remaining time to the Senator.

Mr. RANDOLPH. Mr. President, this amendment, modified, will not restrain synthetic fuels development. In fact, it will help, by removing opposition on environmental grounds.

The words of this amendment will allow a reasonable judgment on environment risks. There is no automatic bar to any plant—the EPA Administrator would have to find a real problem and then act to veto the waiver.

These words have a specific meaning, drawn from the Solid Waste Disposal Act and the Clean Air Act.

The test in the Senator's bill was just "unduly endanger"—more uncertain and vague than the language to which the Senator objects.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. McCLURE. Mr. President, I understand the Senator from Idaho has 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Mr. President, I share the concern my friend from New Mexico has already expressed. I will state it a little more strongly.

I believe the Senator from West Virginia, who has been speaking, is sincere. I think he believes what he has said.

But I read the language in the way which simply says that if the EPA administrator has reasonable grounds to believe, and reasonable or reasonableness is repeated three times in the amendment, that the EPA administrator can make any judgment he wishes and the court cannot overturn him, as a practical matter.

This reminds me of the insurance policy in which the bold print giveth and the fine print taketh away.

We are saying that we are going to give a certainty to these projects and we are just now injecting uncertainty.

Rather than giving them the green light that they know they can go ahead and make the investment and complete the project, we have said to them, "Here is the yellow light."

It is a very pink yellow light that does not just say "caution". It says, "Hey, watch out, friend, this is probably a blinking red light that says more than just caution. You are probably going to have to stop here." That they are going to find a way somewhere during the process of construction to stop the construction.

What happened under RCRA, the Resource Recovery Act, EPA gave somewhat similar but more restricted authority set under their broad definition criteria:

> Almost all oil production, muds, brines, crude oil residue, and mining tailings, may be determined to be hazardous.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. McCLURE. Let me complete this, if I may, because I am very much concerned that the standards established in this amendment and the standards for appeal have not really been thought through.

I do not object to what the Senator from Maine and the Senator from West Virginia are attempting to accomplish by saying that if there is a real health hazard involved, and everybody is in agreement with that, and that judgment is based on substantial evidence and the court can review that and can then make the finding that the judgment was correct, that we ought to respond to that health hazard.

But that is not what the amendment says. That is my concern, that we have erected not a green light for these projects, but a flashing red light that says to anybody who invests in these projects that the very uncertainty we were going to take away with this statute has now been erected, and rather than expediting the process, it will probably halt the process.

I am happy to yield to the Senator.

Mr. JOHNSTON. I have tremendous respect for the Senator from Idaho. I do not believe he is correct in his fear in this amendment because it requires that

two probabilities be found before the waiver can be vetoed.

Mr. McCLURE. If he is going to ask a question, the Senator better hurry because I am about out of time and I want to respond.

Mr. JOHNSTON. First, reasonably be expected means a probability.

Mr. McCLURE. It does not mean a probability. It means reasonable in the judgment of the EPA Administrator.

Mr. JOHNSTON. The intention of the language——

Mr. McCLURE. If, as a matter of fact, they want to say what the Senator just said, the language fails to say it.

Mr. JOHNSTON. It is my intent that it means a probability, as opposed to a possibility.

Mr. McCLURE. All right. I do not misunderstand the Senator from Louisiana's intention. I just say the language did not do it.

I think the Senator from Maine has everything he wanted. The grandfather clause has been eliminated and he can declare a big victory.

Mr. RANDOLPH. I do not think that is true.

Mr. McCLURE. Reasonable men can differ on that subject, Mr. President.

Mr. RANDOLPH. I want to say that this is a national day of prayer. If it is proper, I want to pray the Senator is wrong.

Mr. McCLURE. All I say to my friend from West Virginia is that he may get a special dispensation from the Pope this week, but the Pope is not always going to be here.

He may have a little problem getting that on some of these issues when we may need it the most.

Mr. President, I think I understand what is up here. We have all kinds of people now on the wave of euphoria thinking we have found an answer rather than creating a problem.

Mr. President, I ask unanimous consent that the yeas and nays on this be withdrawn.

The PRESIDING OFFICER (Mr. LEAHY). They have not been ordered.

Mr. McCLURE. They have been ordered under the unanimous-consent agreement, I say to the Parliamentarian and the Chair.

The PRESIDING OFFICER. The Chair advises that they have not been ordered, so that they cannot be withdrawn.

Mr. McCLURE. I do not wish to quarrel with the Chair, but I wish the Parliamentarian would listen to the unanimous-consent request.

The PRESIDING OFFICER. Does the Senator from Louisiana wish to yield time? He has 4 minutes remaining.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time and put the question of the Randolph-Ribicoff amendment.

The PRESIDING OFFICER. The question is on agreeing to the Randolph-Ribicoff amendment.

The amendment (No. 490) was agreed to.

Mr. McCLURE. Mr. President, I ask that the RECORD may reflect that the Senator from Idaho voted "no."

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. And the Senator from New Mexico.

The PRESIDING OFFICER. The RECORD will reflect the objections.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to table was agreed to.

Mr. HAYAKAWA. I want to be recorded as voting "no," also.

Mr. MUSKIE. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. There will now be 10 minutes of debate on part II of the Muskie amendment, with a vote to follow, a rollcall at the expiration of that.

The yeas and nays have not been ordered on the amendment.

Mr. MUSKIE. Mr. President, I take it the 10 minutes are available to me. I yield myself such time as I may take, and I will not take 5 minutes.

Mr. President, I just want to make clear to my colleagues that the second half of my amendment, which is now before us, involves section 21(a), Enforcement of the Project Decision Schedule, which gives the Energy Mobilization Board—namely, its chairman—the power to make a decision or take an action involving Federal, State, and local laws if the Federal, State, or local agency has failed to take action within the time required by the project decision schedule.

This issue has been described at length yesterday and today, and this afternoon I discussed it at length. I am quite sure that all my colleagues have been alerted to the issue and the concerns that have been expressed about this provision by the National Conference of State Legislatures, by the National Association of Counties, by the National Governors Association, and by the National League of Cities; and there is no need for me to expand further the arguments with respect to this provision.

This is a grave intrusion, a significant intrusion, upon State and local prerogatives and their responsibilities to administer their laws, and I urge my colleagues to vote "aye" on this amendment.

I yield back the remainder of my time.

Mr. JOHNSTON. Mr. President, I oppose this amendment in the strongest possible way.

This amendment would gut the enforcement provisions of the setting of the deadline provisions. The very essence of this bill is to give to the Energy Mobilization Board the power to set a schedule. We are assured that that schedule will be reasonable, because we grant the right of appeal if it is unreasonable. But once that schedule is set, it is the intent of this bill to require that the State, local, or Federal agencies decide within that schedule; and if they do not, it is essential that the Energy Mobilization Board be able to decide in their place.

If you have to go to court every time you want to enforce a deadline, this will be another of those bills that is a bonanza for lawyers, and it puts delay upon delay and, in effect, works counterproductive with respect to the purpose we are trying to achieve.

In my view, if this amendment is agreed to, this bill will be worse than a paper tiger. It will be a paper bureaucracy that results in delay rather than expedition.

Mr. President, what we are voting on is the very essence of this bill, the very centerpiece of the bill; and I urge all Senators to vote against this amendment and at least to give us this essential part of the bill. I think we have accommodated to the serious objections about the grandfather clause. Some believe we have accommodated too much.

I implore Senators to give us the centerpiece of this bill, and that is those provisions which are necessary to enforce a deadline.

Mr. President, I yield to the distinguished Senator from New Mexico.

Mr. DOMENICI. Mr. President, on a number of occasions, Senators have indicated, as I see it, that they want a bill that has a chance of expediting major energy projects for this country.

Some said that the committee's bill was a toothless tiger. We did not think so. But I assure Senators that if we accept this amendment, which will place almost every one of these before a court instead of the Board we are creating, we will have produced not only a toothless tiger, but also it will be a stuffed toothless tiger, incapable of doing anything.

I hope Senators will vote to turn down the amendment and leave the bill with a reasonable chance of expediting energy projects which this country needs desperately.

I thank the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

Mr. MUSKIE. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MUSKIE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Iowa (Mr. CULVER) and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Iowa (Mr. JEPSEN), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HEINZ) is absent on official business.

The PRESIDING OFFICER. Are there any Senators in the Chamber who have not voted who wish to vote?

The result was announced—yeas 34, nays 60, as follows:

[Rollcall Vote No. 330 Leg.]

YEAS—34

Armstrong	Javits	Riegle
Baker	Kassebaum	Roth
Baucus	Kennedy	Sarbanes
Bayh	Leahy	Schmitt
Biden	McGovern	Simpson
Chafee	Mathias	Stafford
Cohen	Muskie	Tsongas
Cranston	Packwood	Wallop
Dole	Percy	Weicker
Durenberger	Proxmire	Williams
Gravel	Randolph	
Hart	Ribicoff	

NAYS—60

Bellmon	Glenn	Metzenbaum
Bentsen	Goldwater	Morgan
Boren	Hatch	Nelson
Boschwitz	Hatfield	Nunn
Bradley	Hayakawa	Pell
Bumpers	Heflin	Pressler
Burdick	Helms	Pryor
Byrd, Harry F., Jr.	Hollings	Sasser
Byrd, Robert C.	Huddleston	Stennis
Cannon	Humphrey	Stevens
Chiles	Inouye	Stevenson
Church	Jackson	Stewart
Cochran	Johnston	Stone
DeConcini	Laxalt	Talmadge
Domenici	Levin	Thurmond
Durkin	Long	Tower
Eagleton	Lugar	Warner
Exon	McClure	Young
Ford	Magnuson	Zorinsky
Garn	Matsunaga	
	Melcher	

NOT VOTING—6

Culver	Heinz	Moynihan
Danforth	Jepsen	Schweiker

So Mr. MUSKIE's amendment (No. 486), beginning on line 2, was rejected.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, we have two amendments we are prepared to accept: The Javits amendment——

The PRESIDING OFFICER. If the Senator can withhold for just a moment, if the Chair understands correctly, there had been an order entered earlier for the recognition of the Senator from Alaska (Mr. STEVENS). If the Chair is correct in that regard, the Senator from Alaska would have to yield—would be recognized by the Chair at this point but would have to yield—to the Senator from Louisiana.

Mr. JOHNSTON. Would the Senator from Alaska yield so that I can inform the Senators with respect to other votes?

Mr. STEVENS. I will do that if we can work out with the Senator from Kentucky to vote on an amendment that he will offer following the disposition of my amendment, by 6:40.

Mr. JOHNSTON. By what time?

Mr. STEVENS. By no later than 6:40.

Mr. HUDDLESTON. Six-forty or 6:30 will suit me.

Mr. MUSKIE. Mr. President, reserving the right to object——

Mr. STEVENS. Mr. President, it is my intention to offer my amendment and withdraw it and explain why. Then I will yield to the Senator from Kentucky and vote for his amendment and I expect the vote for his amendment will be in time for some of us to catch a plane.

Mr. MUSKIE. His amendment, as I understand it would give the Board authority to waive substantive law.

Mr. STEVENS. That is correct. It would be approximately an hour under my amendment.

Mr. MUSKIE. I am not sure that the amendment can be discussed in an hour. We were talking all day about language that the Senators disagree on as to whether or not it affects substantive law. His amendment, as I understand it, is positively an amendment that gives that kind of authority, and I think Senators ought to understand it before we vote. So I am not sure an hour will do it before we vote.

Mr. JOHNSTON. Mr. President, will the Senator yield to me? We are aware of an amendment by Senator JAVITS which we are prepared to accept; an amendment by Senator BRADLEY which we are prepared to accept; an amendment by Senator DURKIN which we are prepared to accept; an amendment by Senator HUDDLESTON which will take some debate and a vote, and one by the Senator from Ohio (Mr. GLENN).

Mr. GLENN. I have one which we have not discussed with you, and I am not sure it will be acceptable.

Mr. JOHNSTON. The Senator from Alaska also has an amendment.

I wonder if the Senator from Alaska could tell me how much time his amendment will take?

Mr. STEVENS. Depending upon the circumstances of the Senator from Kentucky's amendment, but not very long. If we are going to debate all the rest of these, it might take a little time. Let me yield to the Senator from Kentucky to see if we can get agreement.

Mr. JOHNSTON. I wonder if we could work out an agreement whereby we disposed of these noncontroversial amendments and then set all of the others for a time-limitation tomorrow with a time certain to vote?

Mr. HUDDLESTON. Well, reserving the right to object, Mr. President, if we could have some idea from the distinguished Senator from Maine about how much time he anticipates he might need on my amendment then we can make some determination. We might be able to start it now and complete the amendment by 6:30 and then hold the other amendments until later. That would be my hope. I do not want to hold up the Senate.

Mr. MUSKIE. I do not really need that much time. What I think about the amendment is that I want to be sure that the Senators have time to understand what the amendment means, and that conceivably could be enough, but I understand the Senator from Alaska wishes to offer his amendment first. How much time would that take?

Mr. STEVENS. If my amendment comes up and there is a vote on it, not very long. With respect to the understanding we reached yesterday, my amendment was supposed to come up in the afternoon, and I deferred all day under the circumstances, which was a very good arrangement so far as I was concerned. I am not objecting. My amendment deals with waiving State and local law. His deals with waiving Federal law, and I am prepared to have a vote on his amendment, if we can, tonight.

Mr. MUSKIE. How much time will be involved in discussing the Senator's amendment before we get to his amendment? I may say I withheld my amendment today from 12 o'clock until 3 waiting for you to offer your amendment. I did not rush to offer my amendment.

Mr. STEVENS. I understand, and the Senator has been very kind, but we both gave way to other amendments. I am sure the Senator realizes that.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. What is the pending business?

Mr. STEVENS. My amendment is the pending business.

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska is recognized and does have the floor, holds the floor, to be recognized to call up an amendment, which amendment has not yet been called up.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. I yield.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Alaska has to leave no later than 6:30 tonight, and he will not be back tomorrow, he cannot come back. So I think it is fair to him and reasonable to all the others that I ask unanimous consent that a vote occur on the amendment by Mr. HUDDLESTON, with the understanding that Mr. STEVENS would offer his, would withdraw it, within this time context, very, very shortly, as he indicated, at 6:30 tonight.

Mr. MUSKIE. Mr. President, reserving the right to object, and I will not, that is perfectly agreeable to me. I find I will not consume a whole lot of time, anyway. I am glad to yield.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, the Senator from Alaska is recognized to call up an amendment which he will then withdraw, and yield to the Senator from Kentucky, who will call up his amendment, on which a vote will occur no later than 6:30 p.m.

AMENDMENT NO. 487

(Purpose: To create an independent civil energy priority projects board which shall assign priority status to certain energy projects, and for other purposes)

Mr. STEVENS. Mr. President, I call up my amendment No. 487.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 487.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I ask unanimous consent that the amendment be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17 delete all after line 18 through the end of the bill and insert in lieu thereof the following:

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) the lack of constant and reliable supply of energy has the potential to cause devastating effects on the interstate commerce and general welfare of the Nation, and poses a threat to national security and world peace;

(2) a clear need exists to decrease reliance on foreign sources of energy and to promote the development, production, and transportation of domestic sources of energy in interstate commerce;

(3) there is a lack of central focus for the development and implementation of common policies and programs for energy development and production among Federal agencies and State and local governments; and

(4) many important energy projects, which have an overriding effect on interstate commerce whose prompt completion is clearly in the national interest have been delayed or terminated due to the conflicting actions of Federal agencies and State or local governments and the length of time needed to meet Federal, State, and local requirements.

(b) PURPOSES.—It is therefore declared to be the purpose of the Congress in this Act to create the Civil Energy Priority Projects Board which shall assign priority status to certain energy projects whose completion is determined to be in the national interest and necessary to prevent disruptions in interstate commerce and to establish policies, procedures, and directives for their timely completion.

CIVIL ENERGY PRIORITY PROJECTS BOARD

SEC. 3. (a) ESTABLISHMENT.—There is established as an independent instrumentality of the Federal Government the Civil Energy Priority Projects Board (hereinafter referred to as the "Board").

(b) MEMBERSHIP.—(1) The Board shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. The President shall appoint the members of the Board from among representatives of groups concerned with the development and production of energy, including representatives of the energy development and production industry, economists, environmental specialists, and Federal, State, and local officials; at least three of which shall be persons in private life. No more than three members of the Board shall be members of the same political party. The President shall designate one of the members of the Board as Chairman.

(2) Members of the Board shall be appointed for a term of three years, except that the term of office of the members first appointed shall expire, as designated by the President at the time of appointment one at the end of one year, two at the end of two years, and two at the end of three years.

(c) TRANSACTION OF BUSINESS.—Three members of the Board shall constitute a quorum, but one or more such members designated by the Board may hold hearings. A vacancy in the Board shall not affect its power to function.

(d) STAFF AND ADMINISTRATION.—(1) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(2) In carrying out the provisions of this Act, the Board is authorized—

(A) to appoint such personnel as may be necessary without regard to the provisions of title 5, United States Code, Government appointments in the competitive service, and to pay such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(B) to employ experts and consultants in accordance with provisions of section 3109 of such title;

(C) to promulgate such rules, regulations, and procedures as may be necessary to carry out the functions of the Board;

(D) to utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal departments and agencies and of State, local, and private agencies with or without reimbursement therefor;

(E) to enter into agreements with other Federal departments and agencies and State and local governments as may be appropriate;

(F) without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions of the Board, with any public agency or with any person, and make payments (in advance, by transfer, or otherwise) and grants to any public agency or private nonprofit organization;

(G)(i) to accept voluntary and uncompensated services, without regard to the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(ii) to accept volunteer service in accordance with section 3111 of title 5, United States Code; and

(H) to request such information, data, and reports from any Federal department or agency as the Board may require and as may be produced consistent with other law.

(3) Upon request of the Board, the head of each Federal department or agency shall promptly make available to the Board the services, equipment, personnel, facilities, and in formation of the department or agency including suggestion, estimates, statistics, and proprietory information.

(e) ADVISORY COMMITTEES.—The Board shall appoint advisory committees to assist the Board in carrying out its functions under this Act. The Board shall include on such committees representatives of Federal agencies, State and local governments, the private sector, and the public.

(f) DIVESTITURE OF HOLDINGS.—Members of the Board shall not be subject to Federal rules or regulations requiring divestiture of holdings.

(g) TERMINATION OF THE BOARD.—The Board shall terminate fifteen years after the date of enactment of this Act.

FUNCTIONS AND POWERS OF THE BOARD

SEC. 4. (a) PRIORITY ENERGY PROJECTS.—(1) The Board shall coordinate and expedite the approval of projects for the exploration, development, demonstration, transportation, production, or commercialization of any form of energy designated by the Board as priority energy projects.

(2) The Board on its own motion or at the request of any person planning, proposing, or implementing an energy project shall designate a project as a priority energy project under this paragraph if it determines that—

(A) the commencement or implementation of the energy project, which is found to be in the national interest and necessary to prevent disruption in interstate commerce, is being delayed by a conflict between the actions of two or more Federal or State agencies or between Federal, State, and local governments in granting or denying a license, permit, certificate, lease, right-of-way, or other authorization for the project:

(B) any Federal, State, or local regulatory requirements which must be met by the applicant are or will cause undue delay for the commencement or implementation of an energy project found to be in the national interest and necessary to prevent disruptions in interstate commerce;

(C) any Federal, State, or local regulatory requirements will cause delay for the commencement or implementation of any energy project whose immediate commencement or implementation is found to be of critical national interest and necessary to prevent disruptions in interstate commerce.

(b) COORDINATION OF FEDERAL ACTIVITIES.—The Board shall coordinate and expedite the actions of Federal agencies necessary to a final decision concerning any project designated under subsection (a) as a priority energy project. Notwithstanding any other provision of law in carrying out the provisions of this Act, the Board may—

(1) require any Federal agency with authority to grant or deny an application for license, permit, certificate, lease, right-of-way, or other authorization with respect to a priority energy program to submit to the Board a list of significant actions taken by the agency concerning the project, a list of significant actions required of the applicant prior to a final decision by the agency concerning the project, a list of significant actions which must be taken by the agency prior to a final decision by the agency concerning the project, and a schedule of action by the agency and the applicant for completion of the application process;

(2) establish deadlines for any such agency to complete action concerning any application for a license, permit, certificate, right-of-way, or other authorization required for any such project;

(3) if an agency fails to meet a deadline established pursuant to paragraph (2), make a decision concerning the application concerned;

(4) order any Federal agency to grant or deny an application for a license, permit, certificate, or lease or make a specific rulemaking;

(5) establish policies, procedures, plans and methods, promulgate rules and regulations, and issue orders to coordinate and expedite agency actions concerning any such project; and

(6) provide procedures and methods for the modification of State and local programs which carry out Federal statutes if such programs adversely affect the expedition of procedures and policies for a priority energy project.

Federal agencies shall comply with the policies, procedures, plans, methods, rules, regulations, and orders of the Board.

(c) COORDINATION OF STATE ACTIVITIES.—The Board shall as necessary coordinate, or expedite the actions of State or local governments necessary to a final decision concerning any project designated under subsection (a) as a priority energy project. Notwithstanding any other provisions of law in carrying out the provisions of this Act, the Board may—

(1) request any State or local government with authority to grant or deny an application for license, permit, certificate, lease, right-of-way, or other authorization with respect to a priority energy project to submit to the Board a list of significant actions taken by the State or local government concerning the project, a list of significant ac-

tions required of the applicant prior to a final decision by the State or local government concerning the project, a list of significant actions which must be taken by the State or local government prior to a final decision by the State or local government concerning the project, and a schedule of action by the State or local government and the applicant for completion of the application process;

(2) establish voluntary deadlines for any such State and local government to complete action concerning any application for a license, permit, certificate, right-of-way, or other authorization required for any such project;

(3) request a State or local government to grant or deny an application for a license, permit, certificate, or lease or make a specific rulemaking;

(4) in any case where a State or local government fails to comply with a request or meet a deadline established pursuant to this section, or issue or deny a license, permit, certificate, or lease or make a specific rulemaking as requested by the Board, the Board may make a decision concerning the application concerned, upon such action by the Board the State shall have no further authority; and

(5) establish policies, procedures, plans, and methods, promulgate rules and regulations, and issue orders to coordinate and expedite State or local government actions concerning any such project.

(d) No State may adopt any law or regulation or attempt to enforce any State law or regulation that will abrogate or will have the effect of abrogating the authority granted to the Board under this Act to coordinate and expedite the exploration, development, demonstration, transportation, production, or commercialization of any form of energy by designating certain projects a priority energy project.

(e) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The actions taken by the Board pursuant to this Act shall be taken without action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(f) JUDICIAL REVIEW.—The actions taken by the Board pursuant to this Act shall not be subject to judicial review under any law except claims alleging either that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by the Act which shall be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States or any State, territory, or possession of the United States or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after the date of the enactment of this Act. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Such court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(g) ANNUAL REPORT.—The Board shall transmit to the President and Congress by January 31 of each year an anunal report. Such report shall contain among other things a review and study of the activities of the United States pursuant to existing Federal laws and regulations which affect the planning, proposal, implementation, and expedition of energy projects.

WATER RIGHTS

SEC. 5. (a) Nothing in this title shall be construed as expanding or conferring upon the United States, its agents, permittees, or licensees any right to appropriate, use, or divert water.

(b) The United States, its agents, permittees, or licensees shall not appropriate water within any State for a priority energy project, or any energy facility or project unless such appropriation takes place pursuant to State law, regulation, or rule of law governing appropriation, use, or diversion of water.

(c) The establishment or exercise pursuant to State law of terms or conditions, including terms or conditions terminating use of permits or authorizations for the appropriation, use, or diversion of water for priority energy projects, or any energy project, shall not be deemed because of any interstate carriage, use, or disposal of such water to constitute a burden on interstate commerce.

(d) No waiver under this title shall apply to, or alter in any way, any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, or diversion of water.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. To carry out the functions of the Board, there are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

Mr. STEVENS. Mr President, as I have stated to the Senate——

Mr. DOMENICI. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senator from Alaska is entitled to be heard.

Mr. STEVENS. As I have stated to the Senate, I filed minority views as a member of the Energy Committee on this bill, and voted against reporting it.

I did so because I feel the experience we went through with the Alaska oil pipeline demonstrates that only if Federal officials have the authority to waive substantive law, and that includes State laws, will we get national energy projects completed on a priority basis.

Now that the floor managers have accepted my Alaska pipeline amendment, it is my intention to support the bill.

I understand the reticence of many people from the West and elsewhere in the country in wishing to protect the integrity of State law, and I share that feeling. It was my intent that we waive only State laws that would impede the expediting of priority energy projects. Anyone who raises these scarecrows indicating we are going to waive any other laws is sadly mistaken. However, I would point out that the history of the Alaska oil project shows that extremists will seize on any small issue to delay a national energy project if they wish to do so.

I believe it is necessary to obtain at the least a waiver of Federal law, and I would point out that the Alaska natural gas transportation system bill that the Senate passed gave the President the right to do that under precisely the terms the Senator from Kentucky will propose; that is the right to waive those laws.

I do hope there will be support for the amendment of the Senator from Kentucky. It goes half as far as mine would go. I have decided to support his amendment because I believe that at least if we give the authority to waive Federal laws, perhaps the legislatures of the individual States will do the same regarding their laws. This would in fact achieve a fast track on both the Federal and the State level.

If that does not occur, I predict that we will be here when construction on the first synthetic crude plant is sought and will be compelled to enact an Alaska pipeline type amendment. This will be an emergency amendment; it will exacerbate again not only the Senate, but the House, and involve a long, drawn out conference, and we will have to do it on an individual, project-by-project basis. That would be wasting precious time in the fight to make this county independent of foreign oil.

So I do intend to yield to my good friend from Kentucky regarding his amendment. Let me ask my good friend from Louisiana one question, though, as I do so.

It is my understanding that there has been some question raised about the size of the projects that would be covered by the Energy Mobilization Board. Has there been any change in this bill on the floor that would indicate the Board would not apply to a small project in an individual State, should completion of that project have national significance?

Mr. JOHNSTON. Mr. President, if I may say so to my friend, we have not put any limitations on the size of the projects to be considered by the Energy Mobilization Board, nor on the number, because we want to leave it to the Board to pick only those projects which are of high priority, without reference to size. We want to make it clear, and we have so stated in our report, that we hope the Energy Mobilization Board will not take so many projects as to water down the effect of the designation.

Mr. STEVENS. But it would apply to a project as large as the $15 billion Alaska gas pipeline system, or a small project, for example, in the State of Nebraska, if it so desired?

Mr. JOHNSTON. That is correct.

Mr. STEVENS. I thank the Senator.

Mr. President, I withdraw my amendment, and I would urge the support of the Huddleston amendment by those in the Senate who feel, as I do, that it is time to get on with this war. If we have the moral equivalent of a war in this energy crisis, we need the legal equivalent of the old war production board. We need to give those downtown the tools to get the job done, at least on the Federal level. The Senator from Kentucky in his amendment would provide that tool. I yield to the Senator from Kentucky, and thank all those Senators who helped me secure this time to speak.

The PRESIDING OFFICER. The amendment is withdrawn, and the Senator from Kentucky is recognized.

UP AMENDMENT NO. 598

Mr. HUDDLESTON. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) on behalf of himself and Senators FORD, STEVENS, WARNER, and MCCLURE proposes an unprinted amendment numbered 598.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 31, line 5, strike "and" and insert after 36 "and 37"

At the end of the bill, add the following new Sections:

WAIVERS OF FEDERAL LAW

SEC. 37(a) If at any time after designation under Section 11 and within 90 days following the date for any final agency action covered by the Project Decision Schedule, the Board determines, in consultation with the agencies concerned, that any Federal law, regulations standard, or requirement presents a substantial impediment to the planning, development, construction or operation of a Priority Energy Project, or to the implementation of the Project Decision Scedule, the Board may recommend to the President that such law, standard or requirement be waived in whole or in part. Such recommendation shall be published in the Federal Register, together with a statement of the reasons on which the recommendation is based. The agency responsible for making the agency decision concerned may submit its views respecting such recommendation to the President and may make such views public during the 30-day period specified in subsection (b).

(b) Not earlier than thirty days after publication in the Federal Register of a recommendation for a waiver under subsection (a), the President may, if he determines a waiver to be in the national interest and that such a waiver would not unduly endanger the public health and safety, transmit such determination to the Congress together with a detailed identification of the requirement to be waived, a statement of the extent to which such waiver would apply, and a statement of the President's reasons for making such determination. Any waiver transmitted under this section may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be waived. Such waiver shall also include such terms and conditions as the President deems necessary to mitigate any adverse effects (including effects on public health, welfare, or the environment) associated with such waiver. The President's transmittal under this section shall also set forth any differences between the waiver recommended by the Board and the waiver transmitted to the Congress.

(c)(1) Except as provided in paragraph (3), any waiver with respect to which the President has made a determination which is transmitted to Congress under subsection (b) shall take effect at the expiration of the first period of sixty calendar days of continuous session of Congress after the date of its receipt by the Senate and House of Representatives unless, before the expiration of such sixty-day period, such determination is disapproved in the same manner as an energy action may be disapproved under section 551 of the Energy Policy and Conservation Act.

(2) In applying the provisions of section 551 of the Energy Policy and Conservation Act to a determination under this subsection, any reference in such section 551 to an energy action shall be treated as a reference to a determination transmitted under this section, subsections (a), (c), (e), (f)(2)(A), and clauses (i) and (ii) of subsection (f)(5)(B) of such section shall not apply, any reference in such section 551 to five days shall be treated as a reference to thirty days, and any reference to a fifteen-calendar-day period shall be treated as a reference to a sixty-calendar-day period.

(3) A determination transmitted under this section may take effect at any time subsequent to the date specified in paragraph (1) if such subsequent time is set forth in such determination.

(d) The agencies responsible for the administration of any requirement waived under this section shall monitor compliance by the Project with the terms and conditions of such waiver, and such terms and conditions shall be enforced by such agencies in a manner consistent with their authorities pursuant to otherwise applicable law.

PROHIBITION AGAINST WAIVER OF CERTAIN RIGHTS AND LAWS

Section 38. No recommendation may be made by the Board with respect to a waiver, no determination may be transmitted by the President with respect to a waiver, and no waiver may take effect under section 37 if such waiver would—

(1) waive any Federal requirement which relates to—

(A) the rights, working conditions (including health and safety), compensation, or activities of workers or their representatives,

(B) antitrust laws (as defined in section 3(1) of the Public Utilities Regulatory Policies Act of 1978),

(C) criminal laws,

(D) civil rights laws;

(2) have the effect of impairing or abridging any rights of any person arising under the Constitution of the United States;

(3) have the effect of abridging or impairing the rights of any person under any provisions of law to receive compensation from the owner or operator of any Priority Energy Project for loss of any property interest as a result of the construction or operation of such Project.

Mr. HUDDLESTON. Mr. President, this amendment is offered on behalf of myself and Senators FORD, STEVENS, WARNER, and MCCLURE to provide authority to the Energy Mobilization Board to recommend to the President, on a case-by-case basis, the waiver of Federal laws, standards or requirements—Federal only—that substantially impede a priority energy project.

Such a waiver recommendation could be made at any time after the designation of the project until 90 days after any agency action covered by the project schedule.

Most important, any decision of the President to waive a Federal statute would be subject to a one-House congressional veto.

Also, this amendment does not authorize the waiver of certain Federal laws.

It does not authorize the waiver of laws relating to worker safety and compensation; of antitrust laws; of laws relating to constitutional rights and property compensation; of criminal laws; or of civil rights laws.

Mr. President, this amendment would give the Board a tool absolutely necessary to deal in a realistic way with the morass of redtape and legal impediments we face.

The committee bill as reported provides a mechanism to deal with most procedural roadblocks to the development and operation of facilities which can help achieve energy independence. However, it falls short of dealing with the situation where we recognize that, regardless of the merits of a proposed project, whether it be converting an oil-fired powerplant to coal, opening a new coal mine or building a new synfuels plant, we just cannot get there from here because of some legal impediment which may be truly insignificant when compared with the proposed project.

"Fast track" per se deals with getting quicker decisions from the multitudes of agencies which must approve a project. My amendment deals with a situation where the answer, no matter how fast it comes, must be no. Regardless of the merits.

My amendment would not authorize the Board to issue waivers. The President would issue the waiver.

It would not delegate legislative responsibility to the executive branch. Either House of Congress could veto any waiver.

It would not ignore the responsibilities of agencies administering constraining statutes and regulations. They would be consulted.

Waivers would not be authorized on spurious grounds. The Board's recommendation to the President must be published in the Federal Register, along with an explanation of the reasons for the recommendation.

It would not mean that the environmental laws would be gutted. If anything, it would protect them from a broadside attack by providing some flexibility.

My amendment would make it possible for the Board to identify situations in which our national priorities demand that a modicum of flexibility be available to help alleviate the intolerable situation we are in with respect to energy; to make it possible to utilize the bountiful resources we have been blessed with.

Any waiver recommended by the Board, approved by the President, and not vetoed by Congress would contain terms and conditions to insure that it goes only as far as necessary to get the job done. In other words, we are not talking about wholesale waivers; we are talking about tightly drawn modifications on a case-by-case basis.

We have to create an atmosphere which matches our often-stated policy to encourage energy self-sufficiency.

We have all heard the horror stories of energy projects canceled because of our redtape and legal constraints. We have to add to that all of the energy projects that never got out of the board room because everyone recognized, right off the bat, that the impediments were insurmountable.

Our current situation where energy self-sufficiency is consistently thwarted by our own laws and regulations is nothing short of a national disgrace.

We have to give this Energy Mobilization Board sufficient authority to do this very important—this imperative—job they have to do.

As the Senator from Alaska has suggested, if there is a situation that can

be accurately described as the moral equivalent of war, certainly, extraordinary measures must be available when nothing else will do to meet the national interest. I suggest that if we had tried to fight World War II with the idea that every law that had been passed in previous years was sacred, I suggest that we would probably still be trying to fight that war or would long ago have lost it.

We are in a difficult situation in this country. Every day we become more vulnerable to foreign capriciousness with the supply of our energy. Our economy is in a tremendous strain because of the costs that we have to bear, most of which we have no control over at all. So this small step is to make the Energy Mobilization Board just what its name implies—a Board with the authority, with the power, to make a difference as to whether or not we go forward with energy projects or we continue to stand still. As I pointed out, there are sufficient safeguards within this proposed amendment to make sure that we do no violence to the environment, that we do not, in any way denigrate our air to the extent that it would be harmful to our people.

I ask, Mr. President, that the Senate accept this amendment, that we go on record as indicating that we do mean business about our energy situation. The people of America are asking when Congress is going to do something. I suggest that we tell the entire world that we are serious, that we are going to do whatever is necessary to make sure this country does not continue to be dependent for its energy sources.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment of the Senator from Kentucky would authorize a waiver of Federal requirements under the circumstances stated in his amendment. Frankly, there was some strong sentiment in the Energy and Natural Resources Committee for such a waiver. Under some circumstances, Mr. President, I personally am in favor of such a waiver.

However, legislation is made up of the compromise and reconciliation of opposing views. As I announced in my opening statement on this bill, we were able to put together what I think is a meaningful, a significant, an important bill and break the logjam. We did so by reconciling many divergent views. We were able to pass the bill by a vote of 13 to 3 out of committee, with only 3 dissenting votes. We were able to do that principally, Mr. President, because we agreed to a strong, enforceable fast track with respect to time schedules, but we also made the compromise within the committee that there would be no waiver of Federal law.

So, Mr. President, in spite of the fact that I have a great deal of sympathy personally for the view of the Senator from Kentucky and in spite of the fact that others on the committee had similar sentiments, I believe that to be true to the compromise, to the thrust of this bill, and to the presentation we have made here for the last 2 days on the floor, we would reluctantly have to oppose the amendment of the Senator from Kentucky.

Mr. HUDDLESTON. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HUDDLESTON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I am not sure that I can speak to this amendment or that, given the evident mood of the Senate, to speak serves any useful purpose. I have had a great deal to say today about the pending bill—my concerns, the dangers that I see. This amendment would simply compound them all.

Mr. President, I have watched the legislative process in this Chamber for, now, my 21st year. I have to say that in that 21 years, I have observed that we do our worst job of legislating when we respond in the name of a current crisis and adopt just anything by way of legislation in order to demonstrate to the people back home that we are coming to grips with the problem, that we are tough, that we are going to be effective.

Every time I have seen one of those tough, effective laws passed, I have observed the cycle turning and inevitably—in 2 years, 3 years, 4 years, 5 years—I begin to hear criticisms of the overregulation that we wrote into that law, of the arbitrary decisions that are coming out of the administrators of that law, of their insensitivity to the interests of this group or that group. In my 20 years, I suppose I have been exposed to the greatest revulsion of arbitrary Government authority, from the imperial Presidency through the bureaucracy to the present antiregulation mood, the anti-Government mood, the make-Government-smaller mood. And here I see it happening all over again in the name of another—and I use the word used by the distinguished Senator from Kentucky—another untouchable.

Anything done in the name of energy legislation is untouchable. And the justification is that we have on the books other laws that are untouchable.

Maybe they were written, too, in large part in response to an earlier outpouring of public emotion and feeling about a current problem. But we are going to do it again.

I tell you this: I shall have no part of this bill with this amendment on it. I am not sure I shall vote for it without this amendment. It is bad enough without it.

Mr. President, what does this do? This proposes that an administrative agency, headed by one man, since the committee would not even make the other two full-time members, one man can suspend laws written by the Congress of the United States, by State legislatures, by local government bodies. Executive fiat, changing laws, substantive laws, deliberately in the name of a national emergency.

Let us suspend the Constitution, let us suspend this body, let us not do it by indirection.

What is the case for this? I have not heard in 2 days anybody give us a list of the substantive laws that are creating the roadblocks against which this legislation is aimed. Not a word. Not a syllable.

The Department of Energy concluded in a report this July that waiver of substantive laws was not necessary to establish a synthetic fuels industry.

Whence comes the necessity then? People looking for ghosts in a closet? People just willing to do anything in the name of demonstrating to the people back home that, by God, they are concerned about energy?

In a way, I rather hope this amendment succeeds, that it passes. It has already been adopted by the House committee, so it would not be in conference. Then let the sponsors bear the responsibility, bear the responsibility of the consequences that would stretch out into the years into the future for this kind of arbitrary authority.

I mean, what amuses me about it is that the sponsors say, "We have got to do it this way because the people who administer environmental laws are arbitrary."

Where are they going to find the Christlike figure who administers this program without being accused of being arbitrary? Where?

Have they got a field of candidates, of persons, men or women, who are going to fulfill these places of responsibility with a guarantee of no arbitrariness?

If that is the case, they have not reassured the National Conference of State Legislators, or the National Association of Counties, or these other agencies of State officials. They surely have not assured me.

I concede the bureaucrats are arbitrary. I think the Administrator of EPA from time to time is inclined to be. I have never found a bureaucrat who totally escapes the temptation to arbitrariness.

But to give this one a whole field, not only of environmental law, it does not exempt all of the other laws that could be set aside. It does not even name them. I doubt the sponsors could list them.

I mean, yesterday the manager of the bill offered a technical amendment to the grandfather provision which exempted some of the other laws that would be impacted by the committee bill, which we have not yet had listed. We identified a lot of other laws overnight that were not exempted. If we study it over tonight, we will find others.

So nobody in this body, including the sponsors of this amendment—if I am wrong, I will apologize—can tell me or the Members of this body what laws, other than environmental laws, could be set aside and waived by administrative fiat if this amendment is adopted.

And we do this blithely. I have seen Senators voting today, Senators who I have heard argue against legislation because it trespassed upon State authority or local prerogatives, because it delegated too much authority to administra-

tive agencies that only the Congress should wield, against Presidential use of congressional prerogatives. All of this suddenly goes out the window because we have another untouchable.

God save us from the untouchables in the name of which legislation is enacted. This is not the first one I have seen. It probably will not be the last one. But I say that we see the impact of these untouchables in the Federal budget. We see it in overregulation. We see it in a public saying, "Get off our backs. Get out of our pockets."

How many times have I heard this loudly recited in this pre-election year, "Off our backs. Out of our pockets. Out of our hair. Cut down the size of Government."

If we think adoption of this amendment will eliminate litigation, keep these issues out of the courts, we have not been looking at what has been going on around this country.

In the last 10 years the enraged citizens and enraged citizen groups in this country have used the ingenuity of a proliferating number of lawyers to put these things in court, and they get there. Even when the statute says they have no right to be there, they find a way to get there.

I say to the sponsors of this amendment and to the sponsors of this bill, offend people sufficiently, and they will find a way to get to the courts and we will find ourselves tangled up in litigation, in a case we have not dreamed about.

If they think they are shortcutting anything with this, they could not be more wrong.

I say these things with a sense of having watched the votes, that it is useless. The Senate is inclined to embrace another untouchable.

We are not going to touch it in conference because the conference has the same thing.

I say this, if that is what happens, this is going to be a case where I am not going to be responsible for the public policy. I am not going to have to take the heat of the criticism that has been directed against environmental laws and other laws for which I have been responsible. I will be in a position to say, "I told you so," and, believe me, there will be an "I told you so" to which my constituents and other Senators' constituents will say, "Amen."

Mr. DOMENICI. Will the Senator from Kentucky yield to the Senator from New Mexico for 3 minutes?

Mr. HUDDLESTON. Yes.

Mr. DOMENICI. I want to support the position of Senator MUSKIE. Maybe I should ask him.

Who controls the time in opposition?

The PRESIDING OFFICER (Mr. BOREN). We are not under controlled time.

Mr. DOMENICI. Mr. President, I yield myself 3 minutes, if the Chair would advise me when I have used 3 minutes.

I say to my good friend from Maine, what I am going to say is going to make neither the Senator happy, nor the Senator from Kentucky happy.

Mr. MUSKIE. The Senator has not made me happy all day.

Mr. DOMENICI. So I might as well be consistent, except that I will vote with the Senator. That is the point I wanted to make. I am going to support the committee.

But I truly believe the truth of the matter is that many of the things the good Senator from Maine has said about the environmental laws, including clean air, as he indicated, the people say that they will do this and that, and holding up this, that, and the other, are true.

I do believe we have drawn a body of law in terms of clean air, clean water, and toxic substances, that but for a serious crisis in energy we would not be here on the floor.

On the other hand, if we were considering those laws with this energy crisis when we were discussing them, I believe we would have found a way to adjust to some very serious delays and some laws where we did want to risk anything for a project.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. DOMENICI. Let me finish.

Mr. MUSKIE. I commend that process now.

Mr. DOMENICI. Having said that, I am in accord that we came to the floor, as a committee, saying we do not want to waive any substantive law. This might be the right mechanism to address those needs, because there is a need to make some exceptions. But I am going to live up to my commitment to the committee.

There is a provision in the bill for a study and a report back by this Board on matters other than time delay on projects, and we are going to accept an amendment from Senator BOSCHWITZ to make the study more in depth and the report back even more in depth, as to what is delaying things, which will give us a chance to take a look, rather than to amend the bill.

I join Senator JOHNSTON in saying that we have a reasonably good bill, with a chance of success, and I will support the committee position.

Mr. HUDDLESTON. Mr. President, I want to take a few minutes to respond to the distinguished Senator from Maine. I always have admired his performance in the Senate and his judgment, and I hold him in extreme high regard.

The Senator made a much more eloquent presentation on behalf of my amendment than I have been able to make. He talked about my reference to untouchable legislation. Frankly, I was referring to the body of environmental law. He talked about untouchable legislation referring to energy law, and that is the very point we are trying to get at here.

All of us have some untouchable legislation; and while we worry among ourselves about our untouchable legislation, the country goes down the drain, wondering what we are going to do about the energy problems.

There is no mechanism available to resolve the differences when these untouchables clash, so that we can determine where the national interests lie; and surely somebody in this great country is in a position to make that determination—whether we are going to forfeit an opportunity to provide us with energy and reduce our dependence on foreign oil; whether we are going to uphold every law that has been passed, as if it were sacred, without any modification to meet any kind of emergency need. That is all we are asking to be done here.

The Senator said it was very dangerous that one man could make this kind of determination, and I agree. My amendment does not provide that in any way. Not one man, not even the Board we are creating here, can make that decision. The Energy Mobilization Board can only recommend to the President that some waiver or some modification, some deferment, some delay of a Federal statute or a regulation, be made in order to provide for an energy project in this Nation.

We have not taken it away from the Congress of the United States; because once the Board recommends, and if the President decides to accept that recommendation, if he, too, believes that the national interest requires that some modification be made, then he has to publish that in the Federal Register. He has to supply the reasons; he has to supply the comment from the agency that has jurisdiction, as to how they feel about it; and then Congress has 60 days in which to veto that decision. Frankly, I think that is too loose, and I would rather not have it in the amendment, but it is there. So Congress has a role to play, the Board has a role to play, and the President of the United States has a role to play.

If we are a country, and if we are a government, somebody has to be able to make the kind of decisions that have to be made to wage this war against our energy crisis.

SEVERAL SENATORS. Mr. President, will the Senator yield?

Mr. HUDDLESTON. Let me address two more points the Senator from Maine made.

Mr. MUSKIE. I want to get to that point.

Mr. HUDDLESTON. I yield.

Mr. MUSKIE. The Senator from Kentucky says that somebody should make these decisions. According to the testimony before the House committee, the most recent OMB update shows that PSD permits for 81 coal-fired utilities have been issued since the program began in 1975, and permits for only 2 plants have been denied.

The Senator from Kentucky says somebody needs to make these decisions. They are being made. If there is evidence to the contrary, why is it not brought to the floor? Why are we not told?

Here are some facts, part of the hearing record, and that shows a disposition to be positive with respect to coal-fired plants. Only two were denied.

Mr. HUDDLESTON. The Senator should read the hearing record of the Small Business Committee, which looked into the problem of governmental regulations on various aspects of our energy needs.

Mr. MUSKIE. What does that hearing record show?

Mr. HUDDLESTON. It indicates that not only are they not able to move forward because of clean air standards——

Mr. MUSKIE. I would like to see that record. The record of the Energy Committee on this legislation has not been printed yet.

Mr. HUDDLESTON. But, more important, it indicates that some projects are not even started because of the difficulty they have encountered.

Mr. MUSKIE. Is that the evidence?

Mr. HUDDLESTON. We have evidence.

Mr. MUSKIE. I would like to hear it.

Mr. HUDDLESTON. There are two areas in which the Senator from Maine expressed considerable concern that simply are not in the amendment.

One was his reference to the ability of the Board to waive State law or State regulation. This does not cover that at all, nor does it cover local. The opposition to which he referred from the National Association of State Legislatures and the National Association of Counties was based on that authority, which is not in this bill.

The Senator said that there would be cases in which waivers that were not necessary would be made. Well, that is ridiculous per se. If there is no necessity for a waiver, no waiver would be forthcoming, and the project would be going forward. So it would be highly unlikely that there would be a request for a waiver.

So far as the arbitrariness is concerned of those who might have some part to play in this process, I think we are at a point in history in this country not because people are arbitrary but because people are trying to administer laws that have been passed here. Laws are passed where there is no way to resolve differences as they try to achieve a particular objective—a very desirable objective in nearly every case.

That is all we are trying to do here—to provide some mechanism so that we can resolve impasses, so that we can resolve conflicts when desirable objectives hit head on, and so that we can move forward with an energy program.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. HUDDLESTON. I yield.

Mr. METZENBAUM. Mr. President, I support the Senator from Maine. I want to address myself to the issue, because it is not a new issue.

The issue was before the Energy Committee when we had this legislation before us, and it is fair to point out there was not unanimity one way or another in connection with this particular matter of waiving substantive law. As a matter of fact, the maker of the motion to make it possible to waive substantive law, according to reports to me, took a head count and found the vote would be 7 to 7 and decided to withdraw the amendment. The fact is that I, and I think a number of other members of the committee, would have voted against the legislation had there been this amendment or anything stronger or anything similar to it which would have provided for the waiver of substantive law.

I thought then and I think now that the procedural aspects, long delays, litigious procedures that drag out the court process for years on end are not in our national energy interests. But be that as it may, I thought we could accelerate the process, but I felt very strongly and feel very strongly and have no reservations in saying that if the amendment of my good friend from Kentucky were to be adopted I would vote against this legislation.

I see no basis whatsoever to make it possible to void substantive laws of the Federal Government nor of the States. This amendment goes only to the Federal Government laws, but I think that we should have no process in the law where you can absolutely void a congressional enactment, even with the safeguards that the Senator from Kentucky would provide.

I think the piece of legislation without this amendment provides a reasonable compromise. It provides a reasonable solution. I understand the concern of the Senator from Maine and others who have expressed reservations with respect to the entire piece of legislation.

But on the issue of procedural as against substantive changes, or waivers, I could not feel more strongly that we should not have any procedure whatsoever to make it possible for one man or any other group of men or women to change the law or to waive the law. I hope that the amendment proposed by the Senator from Kentucky will not prevail.

I would like to vote for this legislation, but I think I, as well as others, would find it necessary to vote against it were it to be adopted in this legislation.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, will the Senator from Kentucky let me address a question to him about this proposal?

Mr. HUDDLESTON. Yes.

Mr. NUNN. As I understand it the proposal basically would allow the Board to make a recommendation to the President. He could either turn down that recommendation for a waiver or he could approve that recommendation for a waiver. Then if the President did approve the recommendation of the Board for a waiver, it would be up to the House of Representatives or the Senate to veto that Presidential waiver if they deemed it prudent. Is that correct?

Mr. HUDDLESTON. That is correct.

Mr. NUNN. Is there any limit to the number of waivers that could occur under this? Could there be 10,000 waivers in a single year or would there be a limit of 5 or 10? Would there be a pilot project concept, or would there be just an unlimited number of authority to waive the law?

Mr. HUDDLESTON. There is no limit in the amendment. I think, however, that practicality would indicate that there is not going to be that many projects and certainly not that many waivers. The waiver, in my judgment, would be a very, very rare request.

Mr. NUNN. What concerns me is that if everyone that does not like the substantive law, and I happen to have a lot of constituents who do not and I am sure other Senators also do, but if everyone of them starts petitioning this Board to waive the substantive law, how can they handle this number and, on the other hand, how can the President of the United States handle this if the Board starts recommending a tremendous number of waivers? I can understand this approach on large projects, very important projects, but if there is no limit, have we in effect just created a bureaucratic nightmare?

Mr. HUDDLESTON. I do not think so because the Board has certain procedures to follow in every case, and it is only after following those procedures to the fullest extent and reaching an absolute impasse that a waiver would even be considered. If it were waiving a clean air standard that would very detrimentally affect the clean air of an area to the extent of being harmful to the citizens, I do not think they would even consider that waiver very long. That would never be recommended, in my judgment, to the President. And so, I think when you apply the rule of probability, practicality, and reason you are going to reduce the number of requests considerably.

Mr. NUNN. Is there any reasonable limit that could be established? The Senator has studied this subject more than I have.

Mr. HUDDLESTON. Limits have been suggested, but it seems to me that is just another unnecessary restriction. We really do not know. I think we can test and see. If the volume gets too great, maybe we better do something about the law. Once you do something about the law there would not be any need for a waiver.

Mr. NUNN. I am just concerned about the situation where even if the Board turned down every request, they could be so flooded with requests that to analyze them long enough to turn them down would bog the whole process down.

Mr. HUDDLESTON. I think by the time they go through their normal procedures and processes, they have accumulated enough data already to be in a position to determine whether or not the waiver of a specific regulation or specific provision would be justified for further consideration and recommendation.

Mr. NUNN. I thank the Senator.

Several Senators addressed the chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCLURE. Mr. President, will the Senator yield 30 seconds to the Senator from Idaho?

Mr. HUDDLESTON. I yield.

Mr. McCLURE. I thank the Senator for yielding.

I shall ask unanimous consent to print in the RECORD a list of major nonnuclear energy facility project terminations, cancellations or amendments. I think that is pertinent to the question that was asked earlier and the comment made earlier and there is an impressive list of refineries, 18 of them; oil terminal and pipeline projects, 2 of them; liquefied natural gas projects, 3 abandoned or

suspended, 4 pending but threatened; coal gasification and liquefaction projects, there are 9 of them; nonnuclear electric power generating projects, 7 companies involved and 11 projects abandoned.

I ask unanimous consent that that be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

MAJOR NON-NUCLEAR ENERGY FACILITY PROJECT TERMINATIONS, CANCELLATIONS OR ABANDONMENTS

The following list of major energy facility projects which have in recent years been cancelled, abandoned or terminated consists of projects for which substantial funds were expended, but which eventually failed for a variety of reasons. These reasons include economic, market, and environmental problems; Federal regulatory delays; delays in obtaining local and State permits; and delays caused by litigation or threatened litigation. The list was compiled from documents published by the Department of Energy and other Federal agencies; research compiled by the American Gas Association, the American Petroleum Institute, the National Petroleum Refiners Association, the Edison Electric Institute, the Atomic Industrial Forum; and interviews with officials of the companies which sponsored the energy facility projects.

The problem of energy project terminations and cancellations due to litigation and regulatory delays is critical to our nation in the development of an appropriate and adequate national energy policy. Project terminations often frustrate Federal energy policy, dampen private initiative, and may leave critical national policy questions in the hands of State and local governments. The large amounts of time, money and other resources expended by private companies on the innumerable local, State and Federal permitting processes which are required for individual energy projects is staggering. The extremely high rate of energy project cancellations, abandonments and terminations over the past decade has forced many responsible and prudent energy company managers to seek diversification, alternative investments and offshore opportunities as better investments of their shareholders' money. Of course, the unattractive climate for energy projects has restricted our domestic supply options.

One major deterrent to the development of domestic energy projects is litigation or the threat of litigation. The testimony of the Chairman of the Council on Environmental Quality (CEQ) to the Energy and Environment Subcommittee of the House Interior and Insular Affairs Committee on July 11, 1979, provides an indication of the amount of Federal litigation which has occurred concerning the legal sufficiency and factual adequacy of environmental impact statements. The Chairman testified that:

". . . during the first 8 years since NEPA's enactment (January 1, 1970 through December 31, 1977) . . . 988 NEPA lawsuits were filed. . . ."

". . . NEPA-related injunctions were issued in 202 cases. . . ."

". . . of the 988 NEPA lawsuits . . . 94 cases involved specific energy projects."

The nation is struggling through a continuing energy crisis which challenges the foundation of our entire economy. Yet, any incentives for energy development which may be provided by our federal energy policy may be nullified completely by the types and frequency of litigation which the nation has experienced in the last decade. The litigation problem must be resolved if sufficient domestic energy resources are to be developed. A process must be created to identify those energy projects which uniquely serve the national interest and to determine the tradeoffs which will be permitted to make the projects operational.

Creating an adequate and viable process will not be easy. One way to start developing such a process is to determine why the energy facility projects on the attached list were terminated, abandoned or cancelled.

I. REFINERIES

Company, location, and size B/D:

Shell Oil Co., Delaware Bay, DE, 150,000.

Fuels Desulfurization (1970),[1] Riverhead, L.I., 200,000.

Northeast Petroleum (1971), Tiverton, RI, 65,000.

Supermarine, Inc. (1972), Hoboken, NJ, 100,000.

Commerce Oil, Jamestown Island, RI—Narragansett Bay, 50,000.

Steuart Petroleum (1974), Piney Point, MD, 100,000.

Olympic Oil Refineries, Inc. (1974), Durham, NC 400,000.

Occmidental, Machiasport, ME, 300,000.

Crown Central Petroleum, Baltimore, MD, 200,000.

Ashland Oil Fort Pierce, FL, 250,000.

JOC Oil, Jersey City, NJ, 50,000. .

Gibbs Oil, Sandorf, ME, 250,000.

Granite State Refineries Rochester, NH, 400,000.

Shell, Gloucester Co., NJ, 150,000.

Cumberland Farms, Portsmouth, RI, 40,000.

Saber-Tex, Dracut, MA, 100,000.

Pepco, Saybrook, CT, 400,000.

Mobil Paulsboro, NJ, 150,000.

II. OIL TERMINAL AND PIPELINE PROJECTS

A. Sohio PACTEX pipeline project with receiving terminal at Long Beach, California, and pipeline to Midland, Texas. Abandoned after expenditure of $50 million.

B. Seadock Deepwater Port project off the Texas coast. Abandoned after expenditure of $20 million.

III. LIQUEFIED NATURAL GAS PROJECTS

A. Abandoned or suspended:

Project and site:

El Paso II, Port O'Connor, TX.

Eascogas LNG, Inc., Rossville, Staten Island, NY.

Tenneco, Inc., St. John, New Brunswick, Canada.

B. Pending but Threatened.

Project and site:

Pac-Indonesia/Pac-Alaska, Point Conception, CA.

Tenneco Trinidad LNG, Inc., NPC-LNG, Inc., Engleside, TX.

Southern California LNG, Terminal Co., Deer Canyon, CA.

IV. COAL GASIFICATION AND LIQUEFACTION PROJECTS

A. High Btu coal gasification projects suspended or inactive

Project, site, and output MMcf/d:

WESCO, Four Corners, NM, 275.

El Paso Natural Gas Co., Four Corners, NM, 144.

Panhandle Eastern Pipeline Co./Peabody Coal Co., Eastern Wyoming, 275.

Natural Gas Pipeline Co. of America, Dunn City, ND, 270.

Northern Natural Gas Co. of America, Powder River Basin, Montana, 275.

Columbia Gas System, Inc., Illinois, 300.

Exxon Corp./Carter Oil, Northern Wyoming, none.

Consolidated Natural Gas Co., Southwest Pennsylvania, none.

B. Coal liquefaction projects abandoned

Project, Site, and output:

Coalcon/Union Carbide, New Athens, Il, 22 Mmcf/d 2900 bbl/d.

V. NON-NUCLEAR ELECTRIC POWER GENERATING PROJECTS

Each of these facilities was proposed prior to 1976 but was cancelled prior to January 1, 1979. (Kaiparowitz was proposed in 1963).

Project, Location, and proposed output:

Kaiparowitz Project, Southern California Edison, Utah, 3000 megawatts (MW).

Empire Energy Center, Empire District Electric Co., Missouri, 325 MW.

Pioneer No. 1 and 2, Idaho Power Company, Idaho, 1022 MW.

Salem Harbor No. 5, North Shore No. 4, New England Power Co., Massachusetts, 1666 MW.

Sherburne County No. 4, Northern States Power Company, Minnesota, 810 MW.

Sewaren No. 7 and No. 8, Public Service Electric & Gas Company, New Jersey, 767 MW.

Rush Island No. 3 and 4, Union Electric Company, Missouri, 1112 MW.

[1] Fuels Desulfurization also attempted unsuccessfully to construct the same 200,000 barrel/day refinery in South Portland, Maine; Seaport, Maine; and Brunswick, Georgia.

Mr. McCLURE. I thank the Senator for yielding.

Mr. FORD. Mr. President, I will take but just a minute or two. We are to vote at 6:30 p.m.

I wish to just take a moment to talk about the speech that the distinguished Senator from Maine made. He said this piece of legislation would offend more people than anything we could do.

Mr. MUSKIE. Mr. President, I am not sure I added the last, but the Senator got the first right.

Mr. FORD. He turned around and said that he had been in this Chamber 21 years and he was now going through the problem of people saying too much government, too many regulations, Big Brother is loving us too much. And somehow along the way those pieces of legislation have been voted into being by some who have been here longer than I have.

If we have too much government and we have too much regulation and we have too much Big Brother, we should have the opportunity to make some changes. That is all we are asking.

One thing I want to add to the Senator from Georgia who was questioning my distinguished colleague. There is one additional item the President has. He has the ability to restrict or modify the request of the Energy Mobilization Board to him. So three things can happen: First, he can turn it down; it is dead. Second, he can restrict it or modify it and send it on. Or, third, he can let it come on to Congress in the manner in which the Energy Mobilization Board recommended it to him.

Then if we want that responsibility to land on our shoulders, then we can veto it and the responsibility is here and it is as Harry Truman said, "The buck stops here." We need a few more Harry Truman philosophies and attitudes around here, so we can get some things done..

The security of this country is at stake. We are not waiving all the substantive law. We are not getting into a Governor's office or a mayor's office or county judge's office. We are only doing what we have done.

We ought to have the opportunity to do that.

Mr. President, I hope my colleagues will take this under consideration that we are making an effort just to say that we are going to do those things that are necessary to maintain the security and the well-being of this country so that we can say to the rest of the world, "We are not going to tuck our tail in and run." We have the ability to do it and we are men and women big enough to do it.

I thank the Chair.

The PRESIDING OFFICER. The hour of 6:30 having arrived, under the previous order, the vote will now occur on the amendment of the Senator from Kentucky. The question is on agreeing to the amendment of the Senator from Kentucky. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, this is the last rollcall today.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Iowa (Mr. CULVER), the Senator from New York (Mr. MOYNIHAN), and the Senator from Delaware (Mr. BIDEN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Iowa (Mr. JEPSEN), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HEINZ) is absent on official business.

The PRESIDING OFFICER. Are there any Senators present who desire to vote?

The result was announced—yeas 37, nays 56, as follows:

[Rollcall Vote No. 331 Leg.]

YEAS—37

Bayh	Goldwater	Morgan
Bellmon	Hatch	Sasser
Bentsen	Heflin	Simpson
Boren	Helms	Stennis
Byrd, Harry F., Jr.	Hollings	Stevens
Byrd, Robert C.	Huddleston	Talmadge
Cannon	Humphrey	Thurmond
Chiles	Inouye	Tower
DeConcini	Jackson	Wallop
Exon	Laxalt	Warner
Ford	Long	Young
Garn	Lugar	Zorinsky
	McClure	

NAYS—56

Armstrong	Hart	Pell
Baker	Hatfield	Percy
Baucus	Hayakawa	Pressler
Bcschwitz	Javits	Proxmire
Bradley	Johnston	Pryor
Bumpers	Kassebaum	Randolph
Burdick	Kennedy	Ribicoff
Chafee	Leahy	Riegle
Church	Levin	Roth
Cochran	McGovern	Sarbanes
Cohen	Magnuson	Schmitt
Cranston	Mathias	Stafford
Dole	Matsunaga	Stevenson
Domenici	Melcher	Stewart
Durenberger	Metzenbaum	Stone
Durkin	Muskie	Tsongas
Eagleton	Nelson	Weicker
Glenn	Nunn	Williams
Gravel	Packwood	

NOT VOTING—7

Biden	Heinz	Schweiker
Culver	Jepsen	
Danforth	Moynihan	

So Mr. HUDDLESTON's amendment (UP No. 598) was rejected.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey (Mr. BRADLEY) is recognized.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Montana (Mr. MELCHER) be added as a cosponsor of my amendment No. 587.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY was recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. BRADLEY. I yield.

Mr. ROBERT C. BYRD. I thank the Senator. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess over until tomorrow, and we will determine the meeting time a little later; but that the Senate resume its consideration of the pending business no later than 10:45 a.m. tomorrow, and that a final vote occur, with paragraph 3 of rule XII waived, on the measure no later than 2 p.m., with the understanding that there be 1 hour of debate, equally divided, on an amendment by the Senator from Mexico (Mr. SCHMITT) within that time.

This would mean that if the hour of 2 o'clock arrived and Mr. SCHMITT had still not had an hour on his amendment, the time of the final vote would be that much delay.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object, does that time include the vote on the amendment, if we are going to have a yea or nay vote?

Mr. SCHMITT. Yes. Reserving the right to object, Mr. President, and I shall not object, it would include a rollcall vote on the amendment, most probably; and I will be happy to tell the managers what the amendment is if they want to know, or not if they want to be surprised.

Mr. ROBERT C. BYRD. The 1 hour would be for debate. It would not be inclusive of the rollcall vote.

Mr. SCHMITT. Yes.

Mr. DOMENICI. Does that include amendments to the amendment, I ask the leader?

Mr. ROBERT C. BYRD. It could very well. As I understand it, Mr. SCHMITT wants to be sure there will be 1 hour for debate on his amendment. It would be ruling out amendments.

Mr. SCHMITT. The majority leader is correct.

Mr. DOMENICI. If there are amendments and debate, that would not be included in the Senator's hour

Mr. SCHMITT. I think that is correct.

Mr. DOMENICI. I have no objection.

Mr. HATCH Reserving the right to object, Mr. President. I have no objection for tomorrow, but I do have an objection tonight. I probably shall not have an objection tomorrow, but I do have an objection tonight to this form of the unanimous-consent request.

Mr. ROBERT C. BYRD. Mr. President, for the moment, then, I withdraw my request and yield the floor to the Senator from New Jersey.

Mr. BRADLEY. I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. Will the Senator yield again?

Mr. BRADLEY. Yes, I yield.

Mr. ROBERT C. BYRD. I like to strike while the iron is lukewarm.

Mr. President, I renew my request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank the distinguished Senator for yielding.

The text of the agreement follows:

Ordered, that the Senate resume consideration of S. 1308 no later than 10:45 a.m. on Thursday, October 4, 1979, that the vote on passage occur no later than 2:00 p.m., provided that there be one hour of debate guaranteed on an amendment to be offered by the Senator from New Mexico (Mr. SCHMITT).

UP AMENDMENT NO. 599

Mr. BRADLEY. Mr. President, I send my amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. BRADLEY) proposes an unprinted amendment numbered 599:

On page 34, line 23, insert the following:

(c) No project or class of projects shall be designated a priority energy project unless the Board finds that the project directly or indirectly will materially reduce the United States dependence on insecure foreign oil or petroleum products—

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, line 23, insert the following:

(c) No project or class of projects shall be designated a priority energy project unless the Board finds that the project directly or indirectly will materially reduce the United States dependence on insecure foreign oil or petroleum products by, but not limited to increased energy production, transportation, conservation, refining, storage, or the demonstration of new energy technologies.

Mr. BRADLEY. Mr. President, the amendment which is before the Senate at this time, and which I am glad to say has been agreed to by both the majority and minority floor leaders on this bill, addresses the very critical national issue of reducing our dependence and vulnerability to insecure foreign oil supplies, for example, in the Persian Gulf area.

Our energy planning has tended to underestimate the seriousness of the potentially enormous political and economic costs of our continued dependence on insecure supplies.

We have also, I think, not made a sufficient distinction between energy imports per se and oil from unreliable foreign sources. This distinction is critical to developing effective policies for enhancing our energy security and reduc-

ing our vulnerability to political and economic coercion.

The U.S. energy security is not threatened by imports of Mexican oil or gas or of Canadian hydroelectric power, or oil, or gas, or even of heavy oil from Venezuela. Mexico, Canada, and Venezuela, because of their proximity to the United States and their relative political stability, are much more secure sources of energy for our supplies than, for example, the Persian Gulf area.

Moreover, the best form of protection against unreliable oil supplies is a diversified competitive supply, both foreign and domestic. Therefore, Mr. President, the only justification for the extraordinary powers proposed for the Energy Mobilization Board, I believe, is that it will give us the promise of substantial benefits to our energy security. For this reason, we must not accept the costs and risks the exercise of these powers entails, there is a substantial likelihood that a project will address the real issue as I am describing it.

The issue is not building more energy projects; it is not just reducing our imports; it is reducing our dependence on and vulnerability to insecure sources of supply, particularly of Persian Gulf, Lybian, and Algerian oil. The criteria set forth in my amendment will insure that only projects that the Board finds addresses this critical energy vulnerability, this vulnerability to supply interruption as I have outlined, will be eligible for accelerated decisionmaking under the act. This stringent test will both limit and justify the costs and risks involved.

Mr. President, I ask that the Senate adopt this language. I appreciate the understanding on the part of the majority floor manager.

Mr. MATSUNAGA. Will the Senator yield for a question?

Mr. BRADLEY. Certainly, I yield.

Mr. MATSUNAGA. As I look at the amendment, the language says "No project or class of project shall be designated a priority energy project unless the Board finds," and so forth. Would ocean thermal energy conversion, for example, be qualified for priority designation under the Senator's amendment?

Mr. BRADLEY. This will be a decision that will be made by the Board, but I assume that it would have an equal chance to qualify with any other form of energy.

Mr. MATSUNAGA. I find further that the Senator's amendment provides that unless the Board finds that the project directly or indirectly will materially reduce the U.S. dependence on insecure foreign oil, and so forth, "materially." Does this mean that in the case of Hawaii, while Hawaii will reduce the import of, say, as much as 10 or 20 percent of foreign oil by going into the development of OTEC, because it is such a minute percentage of the national energy or national amount of oil imported by the United States, the Board could not then find that this project in Hawaii qualifies under the Senator's amendment?

Mr. BRADLEY. I say to the distinguished Senator from Hawaii that there is nothing in this amendment that I would construe would exclude any particular form of energy production. I assume that the purpose of "materially" is simply that it not be de minimis, and it would be somewhat more than de minimis. I assume that that amount in Hawaii would qualify. That is a Board decision.

Mr. MATSUNAGA. So that the term, "materially," does not mean that it is a matter to be taken in consideration of the entire import of foreign oil for the entire United States?

Mr. FORD. Will the Senator yield?

Mr. MATSUNAGA. The Senator from New Jersey has the floor.

Mr. BRADLEY. Certainly, I yield to the Senator from Kentucky.

Mr. FORD. I say to the distinguished Senator from Hawaii that I associate myself with the remarks of the distinguished Senator from New Jersey. He and I worked very closely on wording as it relates to his amendment. The "materially" was agreed upon and then agreed upon by both the majority and minority, because this gives us an opportunity—if it helps you, then that is material. It works. If it helps the country—it gives us a better perspective and ability to get to those things that might be in a position to help the Senator's area and would help mine or someone else's. It does not limit them as much as other wording could.

Mr. MATSUNAGA. Then, if the Senator will yield further, the term "materially," could be applied to the specific sector, a specific State, for example, like Hawaii. And where the project would materially affect the energy situation in Hawaii, then this amendment would permit such designation.

Mr. FORD. I say Hawaii would have special significance here because of its location and some of the problems as it relates to transportation. I think the word "materially" would assist the Senator in his area. But we have to look at the total picture as far as the country is concerned and give an opportunity to make a significant contribution to the Senator's problems. It might be a much smaller one that would be effective on the mainland, we shall say, but the word "materially," I think, benefits the Senator much more than any other language could.

Mr. MATSUNAGA. So the word "materially" would be one as applied to the State of Hawaii itself in this instance.

Mr. FORD. That would be my opinion.

Mr. MATSUNAGA. With that understanding and with the understanding that this colloquy will constitute legislative history on this amendment, I shall not object.

Mr. BRADLEY. I suggest further that the Senator might look at the last line where OTEC, I think, might come under a second category which is "demonstrate energy technology." So he should be doubly assured.

Mr. JOHNSTON. Mr. President, this is an excellent amendment. We accept it with enthusiasm because it makes clear what the job of this Energy Mobilization Board is and what the scope of its intended endeavors is.

We have made very clear at all stages of consideration of this bill that we want to leave it to the discretion of the Board as to what projects qualify and what projects do not qualify, that we put no limit on the number of those projects. But we implore and mandate the Board not to consider so many projects that the meaning of and the ability of the Board to fast track a proliferation of the projects would be watered down.

In other words, if every corner service station applied and got a designation of a priority energy project and the Board was dealing with hundreds, or conceivably even thousands of projects, the term "priority project" would be meaningless. Not only would the term be meaningless, but the Board would be totally incapable of devoting its attentions to a matter of "priority."

So what the Senator from New Jersey does in this amendment is further mandate this Board in the exercise of its discretion to consider projects which are material. Projects, to say it another way, which are important, important because they increase energy production, or transportation, or conservation, or refining, or storage, or because they demonstrate some new energy technology.

This would not prohibit, on even a project smaller than the OTEC problem, if it demonstrated some new technology. A 1-megawatt electric powerplant demonstrating a new technology would certainly qualify if it is important as a new technology.

We think it is a good amendment and for the majority of the committee we will accept it.

Mr. DOMENICI. Mr. President, I join in the comments of the Senator. I think it adds to the bill, adds to what we had in mind for the Board and its decisionmaking.

I would just ask the Senator from New Jersey, by "materially" he means it is not de minimis, it is not an insignificant kind of contribution?

Mr. BRADLEY. The Senator is exactly right.

Mr. DOMENICI. I thank my good friend.

Mr. President, I support the amendment and urge its immediate adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (UP No. 599) was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BRADLEY. Mr. President, I would like to thank the distinguished floor managers for acceptance of the amendment. I think it contributes significantly to the formulation of criteria for this Energy Mobilization Board.

I think it also puts the whole problem of energy security in perspective by defining vulnerability in a very careful manner.

Mr. JOHNSTON. I thank the distinguished Senator from New Jersey.

This does put the matter in a much better perspective. I think it is a most constructive amendment.

Mr. BRADLEY. I hope it is very helpful in determining criteria eligibility for this entire Board.

Mr. DOMENICI. Mr. President, I say to the Senator from New Jersey that I, also, am most appreciative of his patience, not only in waiting, but negotiating with us to arrange for this satisfactory amendment.

I personally thank him for it.

Mr. BRADLEY. I thank the Senators, and the Senator from New York.

Mr. President, I would also like to take this opportunity to express my appreciation for the fine work of Ms. Gina Des Pres of my staff on this amendment.

UP AMENDMENT NO. 600

Mr. JAVITS. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS), for himself and Mr. DURENBERGER, proposes an unprinted amendment numbered 600.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 31, between lines 5 and 6, insert the following:

(i) If the Board recommends that any State or local agency be provided financial assistance for the purposes of implementing sections 16 and 17 of this Act, the Secretary of Energy shall provide such assistance under authorities available to him.

Mr. JAVITS. Mr. President, this amendment proposes that where a State or local agency which is complying with sections 16 and 17—section 16 is the preparation for an action timetable which is required by the law; and section 17 relates to the actual promulgation of the timetable, to wit, the project decision schedule—so where a local or State agency is required to act in that regard, and where in order to do so it needs some financial help, it just cannot do it, it may not have enough help, it may not have the means for taking the action which is required on its part, then, if the Board so recommends, the Secretary of Energy shall provide the necessary assistance under authorities available to him. But only if the Board so recommends, and I assume that would be for proper cause.

I point out to my colleagues who have very graciously been considering this amendment that this could happen because section 16(b)—I am sure they are very familiar with these references—enables the Board to move directly to deal with local agencies, if for any reason it cannot get satisfaction at the State level, or to deal with the Governor if it cannot get satisfaction locally; and similarly, section 17(c) does the same thing. That is, it says that the Board may consult directly with such State or local agency, where it cannot get satisfaction from the Governor.

So it will facilitate keeping whatever we can of local activity and local initiative where the Board thinks some help in order to do that is deserved.

It is for that reason I have submitted the amendment.

Mr. JOHNSTON. Mr. President, the Senator intends, I believe, that the question of the Board's recommendation to the Department of Energy for such funding is a discretionary act, not subject to the appellate process?

Mr. JAVITS. Entirely.

Mr. JOHNSTON. Mr. President, we think this is an excellent amendment. On behalf of the majority of the committee, we accept it with some enthusiasm because it will help State and local agencies have the wherewithal to make these decisions within the time limit.

I think it is constructive. We, therefore, will accept it.

Mr. DOMENICI. Mr. President, for the minority, we not only accept it, but commend the Senator for offering it.

The theory of this bill is going to require a great deal of cooperation between the Federal Government and not only State governments, but local governments. Some of that cooperation will require activities on the part of local government, and wherever we can help them financially it will make the culmination of those cooperative efforts far more satisfactory.

I think it is a good amendment. I urge its adoption.

Mr. JAVITS. I thank my colleagues very much.

Mr. DURENBERGER. Mr. President, I am pleased to cosponsor this important amendment. I am complimented by the language of the Senator from Louisiana and the Senator from New Mexico.

I would, if I may, like to ask two questions about this amendment and thereby make a suggestion to DOE on how it might be implemented.

First, would the Senator expect DOE to define a State assistance program through which States might request moneys for purposes of satisfactorily presented intent of the legislation?

Mr. JAVITS. Not to define it, but I take very seriously what Senator JOHNSTON and Senator DOMENICI said, that where, as a matter of discretion, this is required in order to carry out the intent of sections 16 and 17, I would expect that discretion would be exercised.

I do not think it is the kind of thing that would lend itself necessarily to some kind of regulatory procedure, that is, lay down a rule or regulation for it, because it may not happen very often. If it does, then they might wish to standardize it.

But, again consistent with the fact that there is complete discretion by the Board, I would expect the agency, that is, the Energy Department, to do whatever is necessary to facilitate it.

Mr. DURENBERGER. Within the purview of that discretion, would it be an appropriate purpose to encourage adequate public participation in the State and local regulatory process?

Mr. JAVITS. Again, if the Board—and remember that this discretion is with the Board—feels that any public participation is required in order for the Board to meet its objectives, then it can so recommend to the Department of Energy. I do not think I would anticipate this, nor could anybody.

Mr. DURENBERGER. Would a grant that paid 50 percent of the permitting cost realized by a State, if that State met the deadline and paid 50 percent of the permitting cost, if the State met certain standards, be consistent with this amendment?

Mr. JAVITS. I do not know whether it can be considered reasonable or unreasonable. It will be entirely within the discretion of the Board to recommend and the Department of Energy to perform according to its recommendation.

I imagine that unless there are many cases, it will be an ad hoc situation, depending on each case. I cannot say that 50 percent would be reasonable or unreasonable. But certainly it could do whatever the situation required and the Board recommended.

Mr. DURENBERGER. I thank the Senator.

Mr. JAVITS. Mr. President, I am ready for a vote on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. I thank the managers of the bill for their graciousness and for their recognition of the worth of this amendment.

Mr. JOHNSTON. I thank the Senator from New York.

AMENDMENT NO. 496

(Purpose: To eliminate duplicative paperwork requirements for energy project approvals)

Mr. ARMSTRONG. Mr. President, I call up my amendment No. 496.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an amendment numbered 496.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 39, strike out line 19 and insert the following:

"EXPEDITION OF APPLICATIONS".

On page 39, between lines 19 and 20, insert the following:

"SEC. 14. (a) In order to simplify the procedures for an application for any necessary action or approval by a Federal agency with respect to any project for energy exploration and development, the Director of the Office of Management and Budget shall—

"(1) review the application and reporting forms required by all Federal agencies of any person planning or proposing any such project;

"(2) prescribe, to the extent practicable, a single application form for use by all agencies; and

"(3) take such action as may be necessary to eliminate duplicative application and reporting forms in order to prevent the filing of similar or identical information by any such person with different Federal agencies.".

On page 39, line 20, strike out "SEC. 14" and insert "(b)".

Mr. ARMSTRONG. Mr. President, this amendment addresses itself to a problem which our friends in the energy business believe is a serious one, and that is the proliferation of paperwork in the process of seeking applications.

In testimony before the Senate Banking Committee and other testimony, industry people have told us that frequently they are called upon to answer identical or very similar questions propounded by more than one Federal agency or to tabulate data in similar but not quite identical forms; and as a consequence, they face the problems, more or less continuously, of filling out several sets of applications.

This amendment simply directs the Office of Management and Budget to consolidate these forms so that, to the maximum extent practicable, a single application form will be used by all the agencies that are in this permitting process.

Mr. President, I think this is not controversial. I have discussed it with the managers of the bill, and with that brief word of explanation, I ask for the adoption of the amendment.

Mr. JOHNSTON. Mr. President, this is an excellent amendment. The only problem with it is that we did not think of it first. I congratulate the distinguished Senator from Colorado. It will help expedite these applications, and we are very pleased to accept it.

Mr. DOMENICI. Mr. President, on the minority side, we commend the Senator from Colorado.

This is totally consistent with the intentions of this bill—not to have energy projects filling out more than one form when only one is needed, only one application when one is needed.

We commend the Senator from Colorado for the consolidation of this, and we urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the amendment was agreed to.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 601

(Purpose: To provide for the expedition of energy projects)

Mr. ARMSTRONG. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 601.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 42, line 21, add a semicolon and the following: "EXPEDITION OF ENERGY PROJECTS".

On page 46, between lines 13 and 14, insert the following:

"(g)(1) Any Federal agency with authority to grant or deny an application for an approval for the exploration or development of Federal land in connection with coal, oil, or gas production shall—

"(i) expedite all actions necessary to grant or deny such approval;

"(h)(1) Oil and gas exploration and drilling activities on onshore Federal mineral estate in areas described in this subsection shall be designated by the Board as a separate class of priority energy project. These areas shall include all sedimentary basins in the United States with particular emphasis in sedimentary basins in the states of Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming.

"(2) This class of priority energy project shall be separate from any limit on the number of priority energy projects.

"(3) The Board shall require that the relevant Federal agency issue individual permits for oil and gas exploration and drilling activities within the lands described in subsection (a) within a maximum of 100 days of receipt of the application for the permit, unless the Board determines that an extension of time is justified and consistent with the purposes of this act. The Board shall establish a goal for the Federal agency issuing permits of 30 days for issuance of drilling permits.

"(4) The Board shall ensure that, to the maximum extent practicable, Federal requirements in the permitting process do not duplicate requirements of state and local governments. Duplication identified by the Board shall be reduced by applying state and local government requirements and eliminating the Federal requirement.

"(5) The Board's determinations concerning this class of priority energy project and the issuance of permits shall not be subject to the provisions of § 102(2)(c) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(g)]. However, procedures maintained by the U.S. Geological Survey in accordance with the general objectives of the National Environmental Policy Act as 'Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases, No. 6' shall act as the environmental assessment mechanism prior to permit issuance. The Board shall ensure that NTL–6 is appropriately revised to reduce to one (1) the total number of environmental assessments required from the time the lease is issued until all exploration and drilling permits are issued on the lease. Further, if, after the preliminary environmental review and the U.S. Geological Survey surface managing agency consultation (both described in NTL–6), no significant environmental actions are identified, then the environmental assessment requirement referred to in NTL–6 is waived.".

"(ii) take final action to grant if the requirements of applicable law and regulations have been met or deny such approval not later than twelve months after the date of receipt of an application for such approval; and

"(iii) publish in the Federal Register a notice which describes the final action of the agency concerning such approval.

"(2) The President may waive the provisions of this subsection with respect to a particular application for an approval if he determines that such waiver is in the national interest. Within fifteen days after the issuance of any such waiver, the President shall transmit a report to the Congress which explains the reasons for such waiver and which states why such waiver is in the national interest.

Mr. ARMSTRONG. Mr. President, this amendment consists of two parts. The first part of the amendment, in substance, is very similar to amendment No. 497, which I submitted previously.

The second part is an amendment really drafted by the Senator from New Mexico (Mr. DOMENICI), who joins me in offering this unprinted amendment.

I believe copies of this amendment have been furnished to the managers on both sides, so I will make my explanation brief.

The basic purpose of S. 1308, as we know, is to establish a fast track procedure to grant the necessary permits for designated priority energy projects.

The amendment which the Senator from New Mexico and I now offer provides a form of modified fast track for conventional energy projects particularly, and limited to oil, natural gas, and coal. This amendment simply provides that whenever a Federal agency has the power to grant or withhold approval for oil, natural gas, or coal, it must reach a decision within 12 months of the date the application is filed. It does not say that the application must be granted, only that a decision must be reached.

This amendment comes to the floor as a result of numerous—literally hundreds—of known instances in which such application for coal leases, for drilling permits for oil and natural gas have been on file for years—meritorious, in most cases—but are simply bogged down in the maze of desks and in the various bureaus within these departments. It is an effort to cut down the paperwork and delay, without shortcircuiting any substantive environmental requirements.

Mr. President, this amendment also has been discussed with the managers. In fact, I believe it has been conformed to their desires. With that word of explanation, I ask for its adoption.

Mr. JOHNSTON. Mr. President, we have discussed the first section of this amendment and are very much in favor of it.

The second section, which is the addition of the part by Senator DOMENICI, contains some possible drafting problems that will have to be adjusted overnight.

I wonder whether the distinguished Senator from Colorado would be willing to modify his amendment by deleting therefrom the Domenici section of the amendment and save the latter section until tomorrow, and we will try to work it out. In the meantime, we can accept the amendment of the Senator from Colorado. The amendment of the Senator from Colorado, the first section referred to, is an excellent section, because it will expedite permits for the exploration and development of coal, oil, or gas, and it will insure that these permits will not sit on someone's desk, neither granted nor denied, for years on end, as is the case at present.

With that comment, I hope the Senator will modify his amendment. We are willing to accept it.

In my own State of Colorado, we have known of—and I have read into the record earlier today—a number of cases in which simple applications, apparently

meritorious applications, have taken from 2½ to 10 years to be approved.

I stress that the amendment affect only the processing time. It does not require the waiver of environmental or safety standards. In the event there were a case in which it was necessary to waive this 12-month requirement, the President, with a report to Congress, could do so. That is the first half of the amendment.

The second half of the amendment, to which the Senator from New Mexico may well want to speak, relates to the question of environmental assessments in a certain category of oil and gas wells.

Basically, without waiving the substantive environmental rights, it consolidates the four or five environmental assessments that might be necessary into a single procedure in simple cases.

Mr. DOMENICI. I thank the Senator from Colorado, Mr. President, for agreeing to affix my amendment so that we could expedite this matter. I am sorry we have not been able to clear this with the majority staff, who want to take a look at it.

My intention was that it be a consolidator of a present permit system which is tremendously bulky and duplicative, and perhaps by tomorrow we can do that.

So I urge the Senator from Colorado to modify his amendment by deleting the section he and I added, and then we will be prepared, on the minority side, to recommend strongly the adoption of the amendment.

Mr. ARMSTRONG. I will be glad to do that.

I inquire of the Chair whether the amendment can be split.

The PRESIDING OFFICER. The understanding of the Chair is that it is page 3 of the amendment.

Mr. JOHNSTON. That is correct. It is the third page of the amendment.

Mr. ARMSTRONG. Mr. President, if it is in order then I will ask that the amendment be modified in that way and will add only this word of explanation: I think that in its real effect upon the energy production of this country this amendment may be very far reaching indeed because, while the attention of the pubic is focused on new kinds of energy development and properly so for the foreseeable future, the great potential of this country for the next 5, 8, 10, 12 years, the real increase in domestic energy production must come from the known sources of coal, natural gas, and oil. What we are trying to do is provide a modified fast track for these projects.

So with that explanation, with the modification we have agreed to, I renew my call for the amendment.

The PRESIDING OFFICER. The amendment is so modified.

The modified amendment is as follows:

On page 42, line 21, add a semicolon and the following: "Expedition of energy projects".

On page 46, between lines 13 and 14, insert the following:

"(g) (1) Any Federal agency with authority to grant or deny an application for an approval for the exploration or development of Federal land in connection with energy, coal, oil, or gas production shall—

"(i) expedite all actions necessary to grant or deny such approval;

"(ii) take final action to grant if the requirements of applicable law and regulations have been met or deny such approval not later than twelve months after the date of receipt of an application for such approval; and

"(iii) publish in the Federal Register a notice which describes the final action of the agency concerning such approval.

"(2) The President may waive the provisions of this subsection with respect to a particular application for an approval if he determines that such waiver is in the national interest. Within fifteen days after the issuance of any such waiver, the President shall transmit a report to the Congress which explains the reasons for such waiver and which states why such waiver is in the national interest.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Colorado.

The amendment was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 602

Mr. DURKIN. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) for himself and Mr. LEAHY, proposes an unprinted amendment numbered 602.

Mr. DURKIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35, after line 2 insert the following:

"(e) The Board shall designate any prospective small hydro-electric facility as a priority energy project if such designation is requested. For purposes of this section 'small hydro-electric power project' means any hydro-electric power project which is located at the site of any existing dam, which uses the water potential of such dam, and which has not more than 30,000 kilowatts of installed capacity."

Mr. DURKIN. Mr. President, in one sentence what this does is add small scale hydroelectric projects and existing dams under the fast track provision.

It is my understanding that it has been cleared by the majority leader and the floor manager from the minority side and it speaks for itself.

Mr. JOHNSTON. Mr. President, the Senator from New Hampshire (Mr. DURKIN) has been the leader in bringing to the attention and championing the cause of low-head hydro in the Northeast and indeed in the whole country.

I think before the Senator from New Hampshire began calling this to our attention the Senate and perhaps even the rest of the country was not aware of the importance of this great resource. It is a very significant resource and the Senator from New Hampshire has proposed to us on a number of occasions plans whereby the resource may be developed.

We have pending legislation for a loan program in the Appropriations Committee which I hope we can work out and I am confident we can have a program that will be meaningful for the immediate development of low-head hydro nationwide, not only in the Northeast.

This amendment is a recognition of the importance of low head hydro and in the spirit of granting a preferred and a priority status to the important resource of low head hydro, we have accepted the amendment with our congratulations to the Senator from New Hampshire.

Mr. DURKIN. I thank the Senator from Louisiana.

It is my understanding the Senator from New Mexico has no objection.

Mr. DOMENICI. Yes. I have discussed the matter with my good friend from New Hampshire and I have no objection.

Mr. DURKIN. Fine.

Mr. President, I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment was agreed to.

Mr. DURKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BOSCHWITZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURKIN. I thank everyone concerned, and I thank the Senator from Minnesota. I guess I interrupted the procedure, but I thank him for his graciousness.

UP AMENDMENT NO. 603

(Purpose: To require the Board to report to the Congress not later than December 31, 1981, and annually thereafter, concerning laws and regulations that significantly hinder the completion of energy projects)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Minnesota (Mr. BOSCHWITZ) proposes an unprinted amendment numbered 603.

Mr. BOSCHWITZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 31, line 7, immediately before "In" insert "(a)".

On page 31, line 11, strike out "(a)" and insert "(1)".

On page 31, line 13, strike out "(b)" and insert "(2)".

On page 31, line 16, strike out "(c)" and insert "(3)".

On page 31, between lines 18 and 19, insert the following:

(b) Not later than December 31, 1981, and annually thereafter, the Board shall prepare and transmit to the Congress a report which contains a comprehensive list of all Federal laws and regulations that sig-

nificantly hinder the completion of energy projects, and which includes an analysis of why each law or regulation listed in the report is a significant hindrance to the completion of such projects.

Mr. BOSCHWITZ. Mr. President, this entire Energy Mobilization Board is an effort to patch up a system that has not worked properly, that caused great delays.

This amendment would give the Board in addition to other duties assigned to it that the Board is authorized and directed to provide to Congress no later than December 31, 1981, and annually thereafter, a comprehensive listing of all Federal laws and regulations that significantly hinder the completion of any energy projects. This listing is to be accompanied by analysis of why each law and regulation is a significant hinderance to the energy projects that are attempted in this country.

Mr. President, in an effort to move energy projects through I think it is important that we identify those laws and regulations that serve as hinderances so that the appropriate committees and also Congress itself can act if necessary to remove or to reform such laws and regulations.

In this connection, Mr. President, I do not mean to create within the Energy Mobilization Board a new bureaucracy to sort of catalog and review every Federal law and regulation, but rather to look to the appropriate agencies, the Environmental Protection Agency, the Interior Department, Agriculture, or the Department of Energy which has certainly adequate staffing and adequate legal capacity to find these laws and regulations and, of course, the Energy Mobilization Board itself will during the process of its deliberations on the various projects also be alerted to these laws and regulations.

Mr. President, I yield.

Mr. DOMENICI. I wonder if the Senator will permit me to discuss his amendment with him for a moment.

Mr. BOSCHWITZ. Yes.

Mr. DOMENICI. First, I commend him for the amendment and for his patience in waiting here to get it adopted tonight. I hope it will be adopted.

I merely state that I agree with him that we do not have to have a large bureaucracy to study and report as required by his amendment, because as the Senate will see on page 30 of the bill under powers and authority of the Board section (d) says:

> On request of the Board, the head of any executive department or agency may detail, with or without reimbursement, any of its personnel to assist the Board in carrying out its functions under this section.

I believe what the Senator has in mind is that the Board take from the agencies of this Government their analysis of laws under their jurisdiction and that it compile them and report to us on the effectiveness of this bill with reference to expediting, indicating what other laws may be impediments or inhibitors to energy self-sufficiency or projects. I do not believe we need a new bureaucracy. I think the section I have read plus the fact that this Board will be asking other executive agencies from time to time for information clearly indicates we have enough expertise within the agencies to provide most of that which is needed.

In addition, I commend the Senator for asking that the reports to the Board be further amplified and expanded upon as provided in his amendment, because we are all assuming that this Board and its functions and its powers are going to work. And if it does not we certainly should know why. If it does but not as well as some say we should know why and basically, if I understand the Senator's amendment, it would study those reasons in depth and analyze them and report. Is that correct?

Mr. BOSCHWITZ. That is correct, I say to Senator DOMENICI.

The Board itself is created to deal with many agencies some of which very often find themselves in contest one with the other, one delaying the other and certainly fulfilling the intentions of obtaining the quickest possible energy projects and so that is the purpose, and the Senator's amplification certainly states my intent.

Mr. DOMENICI. From the minority side we not only commend him but we urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, this is an excellent amendment because it requires a specific response and a statement on each of these laws listed in the bill, and I think it strengthens the bill.

I think it insures that the report will be more responsive to the needs of Congress in finding out really what it is that is holding up these projects, if indeed they are held up by certain substantive laws.

We, therefore, commend the Senator from Minnesota and accept the amendment.

Mr. BOSCHWITZ. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Minnesota.

The amendment was agreed to.

Mr. BOSCHWITZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TIME-LIMITATION AGREEMENT ON MR. GLENN'S AMENDMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be not to exceed 1 hour on an amendment by Mr. GLENN tomorrow equally divided in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I believe that about winds it up for today.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business and Senators may speak therein up to 5 minutes each, and the period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMPLOYEE STOCK OWNERSHIP

Mr. LONG. Mr. President, the concept of employee stock ownership has come a long way since 1973 when this Congress passed its first bill to encourage employers to provide stock ownership for their employees. Since the enactment of that first law, the Regional Rail Reorganization Act (Public Law 92–236), we have passed seven other laws to further this important national concept.

This year, I have become even more encouraged that other Members of Congress, as well as government leaders in other countries, are looking at employee stock ownership as a means of helping to resolve many of our current economic problems.

In this session of Congress, under the strong and continued advocacy of Senator DONALD STEWART and others, the Senate has passed two additional bills dealing with employee stock ownership. These bills are extremely important because their effect will not cause any revenue loss to the Federal Government, a complaint which other short-sighted Members of Congress have raised about the tax incentives which we have in the past created to promote employee stock ownership.

On July 31, I wrote Margaret Thatcher, Prime Minister of Great Britain, about our efforts in the area of employee stock ownership. For the information of other Senators, I will ask that her thoughtful response be printed in the RECORD. It seems clear that under her leadership, Great Britain will be looking for ways to broaden stock ownership among its working men and women.

Two weeks ago, the distinguished majority leader made an excellent speech in favor of tying any Federal relief to Chrysler Corporation to employee ownership. I welcome him and his support for this idea. As many Senators know, I have been fortunate to be associated with the entire employee stock ownership concept for many years. In recent years, I have been delighted to have Senators like MIKE GRAVEL, DON STEWART, and others join me in this effort.

With regard to Chrysler, I believe that it is imperative that we require that its employees be given the opportunity to share in any relief which we provide for this crippled company. After all, it is the employees on whom Chrysler must ultimately depend in its revitalization and recovery. This week, I and other Members of Congress will be sending a letter to the editors of the major newspapers in the United States. The message which we will convey in this letter is that the employee stock ownership concept will be an integral part of any Chrysler recovery plan.

In addition, Mr. President, I was pleased to learn that the United Automobile Workers Union, as part of its new

collective bargaining agreement with General Motors Corporation, demanded and received the right to participate in an employee stock ownership plan. I consider this to be extremely significant in that organized labor has traditionally been very ambivalent about employee stock owenership. I commend the UAW for its farsightedness and I would strongly suggest that other labor unions approach this issue with an open mind in representing their members.

Finally, Mr. President, I would like to advise other Senators that the Committee on Finance has been developing statistics that clearly reflect the motivational and productivity effects of employee stock ownership. Since May, we have been conducting a survey among companies with employee stock ownership plans; to date, 75 companies have responded to our request for information. They have advised us that in the average 3-year period since the establishment of an employee stock ownership plan, as opposed to an average 24-year period prior to the establishment of such a plan, they recognized a 72 percent increase in sales, employed 37 percent more employees, recognized an increase of 157 percent in pretax profits, and paid 150 percent more in Federal income taxes. At a time when the newspapers and financial publications are full of articles about our declining national productivity, these numbers carry a clear message to the average American businessman: Employee stock ownership works.

Mr. President, I ask unanimous consent that the letter from Prime Minister Thatcher be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE PRIME MINISTER,
August 31, 1979.

DEAR SENATOR LONG: Thank you for your letter of 31 July and the interesting material you enclosed. Thank you also for your kind comments.

I certainly agree that there are very real benefits to be derived from encouraging wider stock ownership and I think that this applies not only to owning shares in the company in which people work but also to investing in company shares more generally. Like you, I am convinced that by increasing the commitment of employees to the financial wellbeing of their company, and perhaps by making them more aware of problems and requirements of other aspects of the operation of the company, employee share ownership schemes can make a significant contribution to improving productivity and consequently profitability. This can only be to the advantage of all those associated with the company, including the existing shareholders, and clearly if these improvements were to be reflected across the whole of industry the impact on the economy would, I am sure, be substantial.

As you may know, last year the previous Government introduced a fairly limited concession which provided tax relief for certain approved employee share ownership schemes. We have undertaken to expand and build on the existing schemes for employee share ownership and we will also be giving the employees of the nationalized concerns an opportunity to purchase shares in their respective companies if these are sold back into private ownership. However, we are not yet clear quite what form our proposals on wider share ownership will take, but your comments and the material you have provided will be very helpful.

Thank you again for taking the trouble to write.

Yours sincerely,

MARGARET THATCHER.

CHILE: THE EXTRADITION DECISION

Mr. HELMS. Mr. President, critics of the Pinochet government are now calling for Chile's scalp because the Chilean Supreme Court has reaffirmed its decision not to extradite or put on trial three former secret police officers wanted in the killing of the Cuban DGI agent, Orlando Letelier, in Washington in 1976.

This is a very curious position for those who are charging that a state of lawlessness exists in Chile. At the same time that the critics of Chile are accusing that government of acting against the rule of law, they are demanding that the laws of Chile be set aside to suit their political predilections here in the United States. But the fact is that it would no more be appropriate for President Pinochet to dictate to the Chilean Supreme Court what its decisions ought to be than it would be for President Carter to dictate to the U.S. Supreme Court.

Their demands are based on the arrogant assumption that the judicial systems of foreign countries are necessarily inferior to our own. This is the kind of ethnic prejudice which Latin countries have long suffered at the hands of so-called liberals in the United States who adopt a condescending attitude towards Latin nations and institutions.

The truth is that the Chilean judiciary has long had a reputation of total independence from the executive. Even during the Allende regime, the judiciary had the courage to hand down decisions declaring the arbitrary decrees of the Marxist dictator to be illegal and unconstitutional. In taking such a stand they defied threats of retaliation, including even the threat of death.

Unlike the United States, where Supreme Court appointments are often made on the basis of political favoritism or cronyism, the Chilean judiciary is based upon career professionalism. Every member of the Chilean Supreme Court entered the judicial system as a career professional before 1945. The senior member of the court began judicial service 58 years ago. Of the 13 members of the Supreme Court, only 5 have been appointed since the beginning of President Pinochet's administration. Under the constitution, all appointees to the Supreme Court must be made from a list of sitting judges chosen by the judicial system itself. Furthermore, these appointments are for life, further insulating them from executive or legislative pressure.

I believe that anyone who gives an objective reading to the basic court decision, handed down last May, would have to come to the same conclusion as the Chilean court.

The fundamental issue is the 1902 extradition treaty between the United States and Chile. Like many other such treaties, it exempts nationals of the country from extradition proceedings. The United States has similar clauses in extradition treaties with other countries, and the U.S. Supreme Court has upheld their validity. To demand that the Chilean court should set aside an explicit provision of a treaty would set a dangerous precedent that the United States itself would not want to sanction.

Although the central witness in the U.S. case, Michael Townley, was sent to the United States from Chile, it should be noted that he was a U.S. citizen. Furthermore, he was deported, not extradited.

The Chilean court's decision also notes that Townley's evidence was obtained by plea bargaining and is therefore tainted under Chilean law. There are not many civilized countries that allow plea bargaining in exchange for evidence, since the party who gives such evidence has an obvious self-interest in giving false testimony, if false testimony is what will get him a light sentence. Indeed, the widespread use of plea bargaining in the United States has brought U.S. justice into a state of low repute among ordinary citizens, and constitutes one of the darker sides of our judicial system. Chilean law, unlike that of the United States is based on Roman law, and allows proceedings to be brought against an accused only when the evidence is overwhelming. The principal case against the three Chileans is Townley's tainted evidence. The evidence, therefore, not only fails to meet the criterion of being "overwhelming"—it is practically nonexistent so far as judicial process is concerned.

Indeed, Chilean laws of evidence are very strict. The courts can accept as evidence only:

First, original documents;

Second, personal testimony;

Third, a confession by one of the parties to the legal action;

Fourth, a personal examination by the Court itself;

Fifth, expert testimony; and

Sixth, presumptions or circumstantial evidence.

However, the evidence presented to the Chilean court by the United States consisted mainly of photographs and photostats of documents. Such evidence is inadmissible. The only other evidence offered was the tainted testimony of Townley, and the court noted that many of the statements of Townley were self-contradictory on their face.

Mr. President, as I see it, the court had very little choice, granted the evidence presented to it. The court would have had to set aside the civil rights of three Chilean citizens, rights guaranteed by international treaty. The court would then have had to hand them over to the United States to be tried by U.S. courts using a lesser standard of evidence. Alternatively, the court could have ordered them to be tried in Chile, ordering the trial court to admit evidence that is inadmissible under Chilean law.

Mr. President, where are the great champions of civil rights who would demand that any court do such a thing? Or to go even further than that, and demand that the President order the court to violate the civil rights of its citizens?

Such demands are ludicrous. Those who are demanding that Chile move away from authoritarian government toward greater freedoms and greater respect for human rights should be in the forefront of those demanding that the Executive not interfere in the judicial system and that the judicial system observe correct judicial process.

Mr. President, in order that my colleagues may read the court decision of May 13, 1979, for themselves, I ask unanimous consent that an English translation thereof be printed in the RECORD at the conclusion of my remarks.

There being no objection, the translation was ordered to be printed in the RECORD, as follows:

TRANSLATION

Whereas: The Government of the United States has formally petitioned the Government of Chile for the etxradition of Juan Manuel Contreras Sepúlveda, Pedro Espinoza Bravo and Armando Fernández Larios in Diplomatic Note No. 60 dated September 20, 1978, from the United States Embassy, signed by U.S. Ambassador Mr. George W. Landau and brought to the attention of the Supreme Court in the form of a restricted official letter from the Legal Department of the Foreign Affairs Ministry bearing Number 22 and dated September 21, 1978.

According to the petition, the aforementioned individuals have been indicted by the Federal Grand Jury of the District of Columbia as perpetrators of the following crimes:

"1. Conspiracy to assassinate a foreign official, namely Orlando Letelier, punishable under Title 18, Section 1117 of the United States Code;

2. Murder of the foreign official, Orlando Letelier, on September 21, 1977, punishable under Title 18, Section 1111 and 1116 of the United States Code;

3. First degree murder against the person of Orlando Letelier on September 21, 1976, punishable under Title 22, Section 2401 of the District of Columbia Code;

4. First degree murder against the person of Ronni Moffit on September 21, 1976, punishable under Title 22, Section 2401 of the District of Columbia Code;

5. Damages and injuries caused by explosives in a 1975 Chevrolet Malibu Classic used in interstate traffic and carrying Orlando Letelier, Ronni Moffit and Michael Moffit from the State of Maryland to the District of Columbia on September 21, 1976, causing the death of Orlando Letelier and Ronni Moffit, punishable under Title 18, Section 844(1) of the United States Code."

The petitioning Government requests that its petition be duly processed and that extradition be eventually granted, as requested, basing its plea on the provisions of the 1902 Extradition Treaty between the United States and Chile currently in effect.

The aforementioned petition is accompanied by supporting facts presented in English and duly translated, as well as by various exhibits, a copy of all pertinent laws, miscellaneous statements, photographs, documents and copies of the warrants of arrest issued by the United States District Court for the District of Columbia.

According to the information presented, the defendants "did unlawfully, willfully and knowingly conspire and agree together to kill Orlando Letelier, a foreign official, in violation of 18 U.S. Code S 1116.

The purpose of the conspiracy was allegedly that of the assassination of Orlando Letelier.

According to the requisition, the facts were allegedly as follows: One of the defendants, then Colonel Manuel Contreras, acting in his capacity as Director of the National Intelligence Agency (DINA) ordered the assassination of Orlando Letelier, proceeding to issue pertinent instructions to his subordinate Major Pedro Espinoza Bravo, DINA Operations Director, who, in turn, passed these same orders on to Army Lieutenant Armando Fernández Larios and Michael Vernon Townley. The mission was allegedly carried out using DINA resources and funds, falsifying passports and arranging the various details in collaboration with other intelligence agencies.

Lieutenant Fernández allegedly traveled to the United States in pursuance of his mission in order to study all of Orlando Letelier's movements, habits and routines to subsequently turn this information over to Michael Townley.

Once in possession of the information, Townley then allegedly collaborated with a group of Cuban exiles in planning the assassination.

On or around September 19, 1976, Townley allegedly personally planted a bomb in Letelier's automobile, a fact he communicated to his wife, Mariana Callejas, who was to pass the information on to DINA by phone.

The bomb was detonated two days later, resulting in the aforementioned consequences.

The explosion occurred somewhere around the 2300 block of Massachusetts Avenue, N.W. more or less half-way around Sheridan Circle in Washington, D.C. The vehicle was carrying Orlando Letelier, Ronni Moffit, and her husband Michael Moffit, whose statement appears on page 51 of the Translation File.

According to the Spanish version of his statement appearing on page 123 of the respective translation file, Michael Vernon Townley Welch declares, in brief, that sometime either late in June or early in July of 1976 Lieutenant Fernández Larios had requested him to meet with Colonel—at that time Major—Pedro Espinoza, a meeting that was to be strictly confidential. During the course of such meeting the latter asked him whether he would accept a special assignment outside Chile—an assignment which he accepted on certain conditions.

In the course of a second meeting held a few days later the Major informed him that "the DINA mission in which I was to take part was the assassination of Orlando Letelier". They were to use falsified Paraguayan passports and the death was to appear accidental. However, the mission was to be accomplished at all costs, even, if necessary, through the use of a bomb.

Colonel Espinoza allegedly also informed him that the mission to assassinate Letelier was to be a joint endeavor to be carried out by himself (Townley) and Lieutenant Fernández.

As part of the mission, he accompanied Fernández to Paraguay where they were to obtain falsified passports which were to be used in the assignment. He adopted the alias of Juan Williams Rose and Lieutenant Fernández went under the alias of Alejandro Romeral Jara.

A little while later, Colonel Espinoza would have informed him that Fernández was conducting "pre-operative" intelligence operations in the United States, that the Letelier mission was still on and that he was to follow him to the States to "make contact" with a group of Cuban exiles who were to eliminate Letelier.

He traveled to the United States under the alias of Hans Petersen Silva and he says to have been met at Kennedy International Airport by Fernández who was waiting for him accompanied by a woman and by his (Fernández's) sister Rosemarie. The woman had accompanied him as his "cover" on his assignment for the DINA to gather information on the movement and lifestyle of Letelier.

Upon his arrival in Washington, he (Townley) proceeded to work with the Cuban Virgilio Paz in verifying the information supplied by Fernández and to purchase the materials required to prepare the bomb and plant it in Letelier's automobile. When the bomb was ready, Townley personally planted it on the outer crosspiece of the automobile chassis under the driver's seat, securing it with adhesive tape purchased at an earlier date. All this took place on September 19, 1976.

On September twenty-first, he was informed by Ignacio Novo that "something had happened in Washington".

He returned to Santiago on September 23rd and reported to Colonel (at that time Major) Pedro Espinoza Bravo, describing what he had done.

In his statement appearing on page 52 of the translation file, Michael Moffit, who was a passenger in Orlando Letelier's automobile at the time of the explosion, says that while the vehicle driven by Letelier was traveling along Massachusetts Avenue N.W., just as it entered Sheridan Circle, out of the corner of his right eye he suddenly "saw a flash of light which seemed to come from directly behind Ronni, who was seated to his right. I also heard a buzzing sound which lasted less than a second. It was loud enough for me to hear it and sounded like water falling on a burning hot wire". "It seemed barely a fraction of a second after the flash when the car broke out in flames".

The statement, in Spanish, appearing on page 174 of the same file, was made by FBI special agent Stuart E. Case, who offered a detailed description of the components and method used in preparing the bomb, in planting it and in activating it for detonation.

Page 187 contains the Spanish translation of the statement made by María Inés Callejas de Townley who, briefly, states that she is Michael Townley's wife, that she knows of the agreement entered into between her husband and the United States Government, from which she was read pertinent excerpts, that her husband himself told her that he had accepted the assignment of assassinating Orlando Letelier and that these orders were given to him by Colonel Espinoza and that, furthermore, her husband called her six or seven times from the United States to give her messages to be passed on to DINA which she did by telephoning someone named Cristoph Willike.

Page 87 contains the translation of the autopsy report on Orlando Letelier which gives the cause of death as loss of blood, traumatic amputation of the lower extremities, injuries caused by an explosion; circumstances: murder.

The translated version of the autopsy report on Ronni Moffit, female, 25 years of age, appearing on page 105, gives the cause of death as "inhalation of blood, laceration of the larynx and right carotid artery, injuries suffered as the result of an explosion."

The file of documents is accompanied by several photographs of the scene of the crime, of the damaged automobile, of the bodies of the deceased and of various documents allegedly used in pursuing the mission, as well as by film showing several sequences of an explosion in a car similar to that being driven by victim in the case at hand.

Volume One, page 8, *verso*, of the records of the proceedings instituted in Chile contains an order to proceed with the investigation referred to in Articles 647 and 649 of the Code of Criminal Procedure, the indictment drawn up and the order to hold the defendants under arrest.

Pages 50, 51, 52, 53, 54, 57 and 58 contain the minutes written up in the different loca-

tions at which the Court convened to conduct the various proceedings of physical examination.

Volume I, pages 59 and 68, contains the testimony offered by Armando Fernandez Larios, born in Washington, D.C., 29 years of age, single, Captain in the Army, assigned to the Infantry, residing at José Domingo Cañas 2937, in his appearance before the Court. Upon being duly sworn in, he states that he is aware of the reason for his arrest; that he denies all charges preferred against him and derived from the statement made by Michael Townley and denies having been instructed either by Colonel Contreras or by Commander Espinoza to assassinate Orlando Letelier; admits that he accompanied Townley to Paraguay and obtained two falsified passports to be used to travel to Washington under orders from Colonel Contreras and Commander Espinoza, who supplied the details on the assignment which consisted of contacting United States Army General Vernon Walters, head of the United States Central Intelligence Agency (CIA) to obtain information on certain high-ranking American politicians who were willing to support Chile and wanted to know exactly what the country's situation was; explains that he never actually made the trip and that sometime in August of 1976 he was sent to the United States "in reward for his services" simply as "back-up" for a woman who was to perform an assignment in that country.

The name of the woman, as it appeared in the passport, was Liliana Walker Martínez. During the time he spent in the United States, he stayed mostly with his sister, Rosemarie, both in Virginia and in New York. He ends his testimony by stating that his father's serious illness forced him to return to Chile and reaffirming that his stay in Washington and in the United States from late August to September 9, 1976, was for no other purpose than those mentioned in this statement and that he attributed Michael Townley's attitude whereby he accuses him of having taken part in the crime to a measure of convenience in an attempt to lighten the penalty or penalties which could allegedly be inflicted on him (Townley) for the commission of crimes which he personally confessed to.

Page 72 *verso* contains the testimony presented before the Court by Pedro Octavio Espinoza Bravo, born in Santiago, 46 years of age, married, literate, Colonel in the Army attached to the Infantry, residing at O'Higgins 559 in Punta Arenas, in which he states that he knows the reason for his being arrested and after being advised by the Court of the charges preferred against him declares that the accusations are all untrue and denies any guilt whatsoever in connection with the criminal acts culminating in the deaths of Orlando Letelier and Ronnie Moffit.

He explains that the fact is that sometime late in June 1976 Colonel Contreras, who was at the time head of DINA, informed him that he was to send two persons on an assignment to the United States where they were to contact General Vernon Walters. He thought of Townley, who he knew only as Andrés Wilson, because of his good command of English and suggested that he accompany Lieutenant Fernández on the mission. Actually, they only got as far as Paraguay where they obtained falsified passports as circumstances prevented them from making contact with Walters.

He also recalls that sometime in mid-August, acting under orders from Colonel Contreras, he sent Lieutenant Fernández to New York as "back-up" for another agent who was to investigate the actions of certain employees of Corfo-Codelco who were causing operational problems at the company's New York office. Lieutenant Fernández was chosen for this assignment as a type of reward for his services to DINA. He adds that he had no say in the selection of Liliana Walker for such mission. Therefore, all the statements made by Michael Townley and his wife Mariana Callejas with respect to Mr. Fernández's alleged mission in the United States are "lies".

Page 80 contains the testimony offered by Juan Manuel Guillermo Contreras Sepulveda, born in Santiago, 49 years of age, married, literate, Retired Army General attached to the Corps of Engineers, residing at Principe de Gales 7045 in his appearance before the Court who, after being duly sworn in, states that he knows the reason for his being held under arrest at the Military Hospital. He states that the allegation to the effect that the Agency under his command—DINA—was involved in the planning, design or any other aspect of the assassination or death of Mr. Letelier was totally untrue.

He, likewise, denies any and all direct and indirect accusations against him personally made by Townley in his statements to the authorities.

He says that he knew that one of DINA's outside agents or "collaborators" was a person who went by the name of Andrés Wilson and who supplied electronic equipment for intelligence operation and who was recently identified as Townley.

As to Fernández and Townley's trip to Paraguay from where they were to continue on to the United States, he states that their purpose was to make contact with General Vernon Walters, head of the CIA, who was to provide them with information on certain U.S. politicians who wanted or who might be willing to help Chile—a mission which was subsequently canceled.

He maintains that both Colonel Guanes and the United States Ambassador to Paraguay knew the real identities of Fernández and Townley when they arrived in the country and applied for the passports.

As to Captain (then Lieutenant) Fernández's trip to the United States late in August of 1976, it was decided to use him merely as "back-up" for a mission to be performed by a woman in the New York offices of Corfo-Codelco as a type of reward for his many years of efficient service to DINA. He, moreover, denies that Captain Fernández Larios was given any mission other than that mentioned above while on this trip.

Page 95 contains the testimony offered by Army Captain Cristoph Georg Paul Willeke Floel who, after being duly sworn in, stated that, contrary to the remarks made in Mariana Callejas' statement, he never received nor was he aware of any telephone call from her on any matter or mission whatsoever. As for Townley, he knew him only as a mechanic by the name of "Mike" who was working in an automotive repair shop. Some time later he saw him at DINA headquarters where he was known as Andrés Wilson. He has no ideas as to the work or services he performed in DINA.

Page 105 contains the minutes of the Court's physical examination at the Central Identification Office of the dossier and other records on "Ana Luisa Pizarro Avilés".

Page 104 contains the testimony offered by Army Captain René Miguel Riveros Valderrama, who had been working for DINA since 1974 and who, after being duly sworn in, states that sometime in mid-August 1976 Colonel Contreras entrusted him with a mission in the United States, where he was to make contact with Colonel Vernon Walters of the CIA, who was to supply them with information favorable to Chile. The mission was to be carried out in conjunction with Lieutenant Rolando Mosqueira. Both went to Washington but were unable to make the contact and returned.

Page 106 sets forth the testimony offered by Army Captan Manuel Rolando Mosqueira Jarpa, who, after being duly sworn in, informs the Court that he worked for DINA and was entrusted with a mission in which he was to travel to Washington to obtain information on certain Americans with great political influence who were sympathetic to Chile. His orders came from Colonel Contreras while the detailed instructions, as well as the passports and money were supplied by Commander Espinoza. "My partner was Captain Riveros." He knew nothing whatsoever about a Lieutenant Fernández at that time.

The appearance of Rolf Gonzalo Wenderoth Pozo, Lieutenant Colonel in the Army, is annotated on page 108. Upon being questioned in conformance with the law as to the identity of Liliana Walker Martínez, the witness, who was working for DINA, replied that he did not know the woman and had been supplied only with her name and references as a "ear" or "informant" for the Agency.

Page 116 contains the testimony presented to the Court by Rosemarie Catherine Guest, sister of Armando Fernández Larios, resident of Arlington, Virginia, United States, who states that her brother arrived at National Airport on August 26, 1976, accompanied by a woman whom she did not know. The next day she took him home with her to Virginia where he remained until September 6th when they left together for New York, remaining there until September 9th when he was forced to return to Chile after receiving an urgent message to the effect that their father had been taken seriously ill.

As far as she recalls, her brother devoted himself to rest and relaxation and played tennis every day at the place where she worked. She asserts that he never hid his true identity during his stay in the United States at this time.

She adds that Attorney Propper prevented her from making this same statement before the Grand Jury despite her having been subpoenaed.

The testimony offered by Lawrence Arthur Guest, Armando Fernández Larios' brother-in-law, in response to a questionnaire submitted by the latter's defense counsel, appears on page 119.

Page 136 contains the act of constitution of the Court convening at the Military Hospital in this city recording the fact that the Court examined the clinical records on hospital patients for the month of August 1976. The files corresponding to this month showed no record whatsoever of Ana Luisa Pizarro Avilés' being treated as a patient.

Page 141 contains a deposition by Physician Oscar Novoa Allende on the medical care he rendered to Miss Pizarro, as recorded in the certificate of discharge of the Military Hospital in August of 1976.

On page 225 is the testimony offered by Jerónimo Pantoja Henriquez, in response to a questionnaire submitted by the defense counsel for Manuel Contreras.

Page 227 reproduces the written report submitted by General Héctor Orozco Sepúlveda regarding his alleged interview with Michael Townley in the United States in April of 1978.

Page 230 contains a similar statement by Major (J)[1] Jaime Vergara Lonnberg.

Page 231 *verso* contains the decision declaring the investigation closed and ordering that the attorney representing the petitioning Government be notified of the evidence assembled.

On page 238, the attorney representing the United States of America with respect to its petition for extradition explains the grounds for such petition in the form of a detailed brief in which, after a few general remarks

[1] Translator's Note: "J" signifies legal branch of the Chilean Army.

and an analysis of the requirements of the bilateral treaty between the two countries with respect to form and content, launches into a full-scale study of the *corpus delicti* and of the role played by each of the defendants in the commission of such crime, concluding his brief with a reference to the option of extraditing nationals, pleading that the extradition of the defendants be granted inasmuch as the present case fulfills all the extradition requirements and inasmuch as the cumulative evidence constitutes sufficient proof that a crime has been committed and represents well-founded, admissible presumptions of guilt on the part of the defendants.

On page 311 *verso* the Court orders that the defendant Armando Fernández Larios be informed of the facts of the case. Attached to page 312 we find the brief prepared by Fernández's defense counsel where the attorneys present their own comments, analyse the charges preferred against their client, present grounds for their being challenged as to their validity, subsequently launch into an analysis of the evidence presented in the extradition file and conclude by pleading that the petition for the extradition of Army Captain Armando Fernández Larios be denied. The brief is accompaned by numerous exhibits.

On page 344 *verso* the Court acknowledges the comments made by Fernández Larios and the exhibits presented and orders that Juan Manuel Contreras Sepúlveda and Pedro Octavio Espinoza Bravo be informed of the proceedings within a period of twenty days.

The defense counsel for Pedro Espinoza Bravo presents its comments in a brief appearing on page 413, challenging the evidence presented and presenting various exhibits as well as a report having the force of law. The brief analyses the charges serving as basis for the bill of indictment drawn up by the Grand Jury, the evidence presented, as well as the investigation conducted by the President of the Supreme Court, makes reference to statute law and to legal doctrine on extradition and to their application to the case at hand, finally arriving at the conclusion that extradition is not warranted and must be denied.

Page 502 contains the detailed brief prepared by the defense counsel for Juan Manuel Contreras Sepúlveda in which the attorneys present their comments, challenge the evidence, introduce exhibits and petition for various proceedings.

The defense counsel begins with an analysis of the proceedings and charges brought by the Grand Jury, goes into a lengthy and detailed exposition on the evidence presented, ending this portion of the brief with an analysis of the extradition process from the legal point of view in a series of closing statements. It then proceeds to challenge the admissibility of the petition, launches into an analysis of the alleged role played by its client, of the jurisdiction of the Chilean courts and of the concept of political offense and ends pleading that the petition for extradition be denied.

Page 693 *verso* contains the decision ordering that the facts be made known to the *"Fiscal"* [2]

Following a detailed examination of the trial and of the various Court proceedings, the *"Fiscal"* arrives at a conclusion to the effect "that the extradition of Juan Manuel Contreras Sepúlveda, Pedro Octavio Espinoza Bravo and Armando Fernández Larios presented by the United States Government should be denied".

On page 714 *verso* the Court gives notice that it is ready to announce judgment.

In view of the above and considering:

With respect to the petition for extradition and the grounds for such petition:

1. That the Government of the United States has formally petitioned the Government of Chile for the extradition of Juan Manuel Contreras Sepúlveda, Pedro Octavio Espinoza Bravo and Armando Fernández Larios in Diplomatic Note No. 60 dated September 20, 1978, from the United States Embassy (signed by U.S. Ambassador George W. Landau and brought to the attention of this Supreme Court in the form of a restricted official letter from the Legal Department of the Foreign Affairs Ministry bearing Number 22 and dated September 21, 1978) and that, according to the petition these individuals were indicted by the Federal Grand Jury in the District of Columbia, United States law as perpetrators of the following crimes:

"1.—Conspiracy to assassinate a foreign official, namely Orlando Letelier, punishable under the U.S. Code, Title 18, Section 1.117; 2.—Murder of a foreign official, namely Orlando Letelier, on September 21, 1976, punishable under U.S. Code, Title 18, Sections 1.111 and 1.116; 3.—First degree murder committed against the person of Orlando Letelier on September 21, 1976, punishable under the District of Columbia Code, Title 22, Section 2.401; 4.—First degree murder committed against the person of Ronni Moffit on September 21, 1976, punishable under the District of Columbia Code, Title 22, Section 2.401; and 5.—Damages and injuries caused by explosives in a 1975 Chevrolet Chevelle Malibu Classic used in interstate traffic and carrying Orlando Letelier, Ronni Moffit and Michael Moffit from the State of Maryland to the District of Columbia on September 21, 1976, causing the death of Orlando Letelier and Ronni Moffit, punishable under the U.S. Code, Title 18, Section 844(1.)"

As stated in the introductory portion of the present ruling, the petitioner requests that its petition be duly processed and that extradition be ultimately granted, as requested, basing its plea on the provisions of the 1902 Extradition Treaty between the United States and Chile, currently in effect. In pursuit of this goal, the petition is supported by various exhibits in English, accompanied by their respective Spanish translations, as well as by statements, affidavits, photographs and copies of pertinent legislation and of the arrest warrants issued by the United States District Court for the District of Columbia.

All the information presented in support of the petition for extradition and serving as grounds for such petition including copies of pertinent legislation and warrants of arrest, photostats of original documents such as transcript of statements made by witnesses under interrogation and testimony presented before the Federal Grand Jury in the District of Columbia, testimony given to FBI agents and to attorneys attached to the United States Attorney's Office, as well as the various photographs and other types of material evidence described in the index beginning on page 15 of the original English file, whose Spanish translations have been checked by experts Gloria Jiménez Matus and Marta Anders de Vargas, appointed by this Court (page 23), and appear in the corresponding translation file, have been duly certified as to their authenticity by competent officials of the petitioning government in the manner prescribed by Article III, Paragraph 2 of the 1902 Extradition Treaty signed by the United States and Chile and legalized in conformance with the law in the presence of the United States as well as Chilean authorities pursuant to the provisions set forth in Paragraph 1 and in Paragraph 2, Number 3, Article 345 of the Chilean Code of Civil Procedure in harmony with the provisions of Paragraphs 1, 2 and 4, Article 186 of the Chilean Code of Criminal Procedure, as set forth in the corresponding proceedings appearing on pages 7, 8, 9, 10 and 11 of the aforementioned original English volume or file. The proceedings appearing on page 11 refer to the authentication of the signatures of Mr. George W. Landau, United States Ambassador to Chile and Mr. Edwin L. Beffel, U.S. Consul. The former has presented the petition for extradition of the aforementioned individuals in accordance with Article III, Paragraph 1, of the 1902 Extradition Treaty.

With respect to the procedural admissibility or validity "in limine" of the evidence presented:

2. That to ensure a logical line of reasoning and due to its particular importance from the legal standpoint to the extradition process under consideration and to the very concept of extradition, it is advisable to, first of all, refer to the statement made by the defense counsels for defendants Fernández, Espinoza and Contreras on pages 340 *verso*, 425 and 512 *verso*, respectively, which corresponds to the assertion made by Mr. Manuel Urrutia Salas, attorney and professor of procedural law in his report appearing on page 401 and which is attributed the force of law, as well as to the statement made by the *Fiscal* for the Supreme Court in his opinion reproduced on page 694 of the present file—a statement representing a general attack on all the supporting evidence presented with the petition for extradition and explained in detail in the first supplementary petition to each of the briefs presented by defendants Espinoza and Contreras—an attack which essentially maintains that our procedural law determines which means of proof are admissible in court of law (Article 457 of the Code of Criminal Procedure) and that admissible evidence is, thereby, limited to documents, witnesses, to a confession by one of the parties to the legal action, to a personal examination by the Court itself, to expert testimony and to presumptions or circumstancial evidence and that all other other means of proof which are not included in this list or "catalogue" are, therefore, inadmissible; that, in view of the foregoing, all the photographs and other enclosures comprising the file of exhibits, "as it has been called by the court", presented with the petition for extradition, "must be declared inadmissible and of no value whatsoever as evidence inasmuch as they do not represent means of proof of the type required by Chilean law"; that Chilean procedure law—

"requires that all means of proof must be compatible with the probative process previously defined by the law with respect to the method, timeliness and circumstances under which each means of proof must be presented";

that, in view of the above, it follows, in brief, that

"the petitioner in the present action has failed to present any evidence against the defendants both in its petition as well as in any and all subsequent proceedings inasmuch as the photographs are inadmissible and the unofficial documents are challengeable on the grounds that they have not been duly authenticated, have not been duly acknowledged by their alleged authors in the presence of this Court, have not been duly checked and compared, have not been certified by the corresponding clerk with respect to their authenticity and have not been duly legalized, were the petitioner attempt to endow them with another *status*".

Further, the aforementioned opinion expressed by the *Fiscal* of the Supreme Court with respect to the testimony made by Michael Vernon Townley subsequent to the time he would have made a deal with the United States Government under which he would not be tried for the murder of Orlando Letelier and Ronni Moffit and obtained other promises, both for himself and for his wife María Inés Callejas, indicates that when making his statement Townley "was obviously intent on saying what he believed was

[2] Translator Note: The "Fiscal" is a career officer of the Supreme Court.

best for himself with regard to the aforesaid agreement" and concludes that:

"Article 323 of our Code of Criminal Procedure prohibits the use of promises, coercive acts or threats in attempting to extract the truth from a defendant. Pursuant to Article 10 of the Civil Code all acts prohibited under the law are null and void."

Yet another paragraph of the same opinion states that:

"Consequently, Townley's statement in which he supplied information to the Federal Attorney and subsequently repeated before the District of Columbia Grand Jury is invalid under Chilean law since as mentioned above, it violates Article 323 of the Code of Criminal Procedure. The same holds true for all the accusations derived from Townley's statement to the District of Columbia Grand Jury."

At the end of his report *Fiscal* Chamorro states:

"The other presumptions of guilt mentioned by attorney Etcheberry derived from sources other than Townley's statement which as mentioned above, is worthless, do not fulfill the requirements set forth in Article 488 of the Code of Criminal Procedure for them to constitute full proof."

3. That as maintained in the defense briefs for defendants Espinoza and Contreras in support of their arguments and as similarly maintained by Fernández Larios, by the report by Professor Urrutia attributed the force of law and by the opinion issued by *Fiscal* Chamorro, the decisions handed down by the Chilean Supreme Court "have been consistent in the sense that they regard extradition as an act of sovereignty and, therefore, subject to the country's procedural legislation, particularly as regards the procedure for evaluating the evidence."

4. That the foregoing is effective only insofar as our Supreme Court has consistently ruled that extradition is an act of sovereignty, as demonstrated by the jurisprudential quotations included in the defense brief prepared by the counsel for Espinoza appearing on pages 450 and 450 *verso*. The following quotation applies to the extradition proceeding brought against José Sarmiento or José Doblado in 1954:

"In effect, the judicial authority responsible for determining the identity of the criminal, whether the crime in question is a common-law crime or a political offense or whether, for any reason, it falls outside the sphere of offenses subject to extradition, etc., performs an inherent act of sovereignty in deciding whether or not to extradite the party concerned.

"All this justifies the examination of the evidence by the Court inasmuch as the omission of such procedure would mean the inadequate protection of the rights of the suspect who could easily find himself extradited on the basis of ad-hoc evidence."

However, it is particularly important to put forward that this is not the only point expressed in the verdict invoked, but that in the same clause, the decision adds:

"Thus, this doctrine is consistent with Article 647 of our Code of Criminal Procedure which authorizes a brief investigation into the identity of the defendant, the perpetration of the crime and the role played by the defendant. And yet he can be held (Article 646 of the Code of Criminal Procedure.) The person responsible for conducting the extradition proceeding may introduce evidence (Article 649, Paragraph 1 of the Code of Criminal Procedure) and is heard under identical conditions to those granted to the defendant (Articles 652–654 of the Code of Criminal Procedure), all of which indicates that there is no obvious conflict between Governments who are party to such proceedings with respect to their sovereignty."

Lucchini (*Revista Penale*, I, 348) rightfully declared that:

"A State which opts for or grants a petition for extradition and subsequently effectively extradites a person who has committed a crime in a foreign country neither disavows nor gives up its own jurisdiction over the matter inasmuch as it has already conducted proceedings derived from such jurisdiction such as a summary proceedings and the temporary or permanent arrest of the guilty party.

"We must add that these summary proceedings, arising out of a nation's sovereignty, are essential to the legal process of extradition. And it is reasonable that before extraditing any person, the government must be certain that it is performing an act of justice. Furthermore, as to these proceedings which represent an inherent part of the passive extradition process, it should be remembered that the government answering the petition for extradition is not up against a case of *ius puniendi* since, as mentioned above, the petition is not founded on the right to exact punishment but, rather, on international assistance which demands that the legal system be preserved—a need common to all nations of the civilized world."

One of the whereas clauses introducing the Chilean Supreme Court decision handed down in the extradition proceeding brought against Héctor Cámpora and others by the Government of Argentina in September 1957 and quoted in the defense brief prepared by the attorneys representing defendant Espinoza reads as follows:

"Supplementing the rule of law established by Paragraph 2, Article 647 as mentioned above in connection with another line of reasoning, Paragraph 3 of the same rule of law requires that the native court substantiate the petition for extradition under examination specifically by determining whether or not the persons named as defendants actually committed the crime of which they have been accused. Thus, a petition for extradition based on facts which the petitioning judge or authority deems sufficient to warrant that the petition be approved shall not be automatically granted. The courts examining the petition must arrive at their own decision and since this falls under national jurisdiction it is the national courts who have jurisdiction over the matter and who must, therefore, judge the case independently from the opinions of the foreign tribunal."

However, this does not mean that our Supreme Court has declared in this particular ruling or, as maintained by the petition, has consistently declared:

"That extradition is an act of sovereignty and, therefore, must comply with the country's procedural legislation, particularly with regard to the procedure followed in examining the evidence presented."

The latter conclusion or doctrine does not appear to have been ratified, nor expressed in any explicit or implicit declaration made in any Supreme Court decision handed down in a similar case of passive extradition or in any other case with legal characteristics similar to the case at hand.

5. That such a position is unacceptable, in view of the principle of international law upholding the sovereignty of nations—an undisputable principle—for any country to be prevented from applying its internal legislation which, through its constitutional or executive channels it considers appropriate, adequate or necessary. Each State, in an act of sovereignty, lays down rules of public law which must be complied with within its national borders, the most important of which are the rules of procedure for civil or criminal actions or all other matters brought before its respective courts of justice which safeguard the nation's exercise of its sovereignty, which serve as the very foundation of a country's independence and as the philosophical basis for yet another indisputable principle—that of a given country's nonintervention in the internal affairs of another country, without prejudice to any eventual pertinent agreements entered into by the two countries.

6. That with respect to these proceedings, the Governments of the United States and Chile are bound by the provisions of the 1902 bilateral extradition treaty, presently in effect. Under the terms and conditions of Article One of such treaty, both governments "mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed."

7. That the appropriate Chilean laws for determining whether or not the evidence of guilt presented in support of the present petition for extradition offer sufficient grounds for the apprehension and prosecution of the defendants Fernández, Espinoza and Contreras, in conformity with the provisions of the treaty, are none other than those found in Paragraph 3, Title IV, Part One, Book II of the Code of Criminal Procedure and, more specifically, the provision of Article 274 of such Code which reads:

"Article 274. After questioning a suspect, a judge shall charge him and bring action against him in all cases where the facts:

"1. Prove that the crime in question has in fact been committed; and

"2. Show that there are, at least, well-founded presumptions of the guilt of the defendant either as perpetrator, accomplice or accessory to the crime in question."

8. That the court must analyse, weigh and evaluate the facts and evidence presented by the government petitioning for extradition solely on the basis of this rule of procedure and may resort to no other rule of Chilean procedural law, particularly with regard to its method of evaluating the evidence, as presented in these proceedings.

Furthermore, in attempting to demonstrate the illogical nature of the argument under consideration, as well as its lack of legal context within the framework of the good faith in which contracts must be entered into and executed if the contracting parties are to achieve what they had in mind when formalizing the agreement, it suffices to point out that adherence to the aforementioned doctrine would make the extradition process completely inoperative inasmuch as this would mean requiring that the country petitioning for the extradition—in this case the Unitd States—adapt its summary investigative proceedings and legal prosecutions to the principles of the Chilean Code of Criminal Procedure to ensure their value as evidence in this country, which, in turn, means requiring its judicial authorities and courts of justice to investigate crimes committed within its borders and subsequently file suit with its court based on Chilean procedural law which is obviously different from its own legislation. Moreover, if in presenting a petition for extradition, Chile was required to do likewise, this would become a "dead letter" in our own legislation, because all summary investigations and court proceedings must comply with Chilean law.

Finally, the mere enunciation of this theory which signifies an *in limine* rejection of the evidence presented by the United States Government in support of its petition for extradition, and leads to such evidence being declared inadmissible under formal rules of procedure which are irrelevant to the

case at hand would mean disclaiming that country's sovereignty to resort to the procedural legislation which it considers appropriate in conformance with the legal precepts referred to in ground number 5 of the present ruling—a theory which, in practice, can be upheld only in the case of two countries with identical penal codes.

Extradition per se and the grounds for extradition:

9. That, according to ground number 6, the Governments of the United States and Chile are bound with respect to these proceedings and pleadings by the provisions of the 1902 Extradition Treaty and the last paragraph of Article III of this agreement stipulates that: "The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in the Republic of Chile, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made".

Paragraph 2, Title VI, Book III of the Chilean Code of Criminal Procedure governs the process of passive extradition in which the first trial is handled by the President of the Supreme Court, and states the rules of procedure which must be followed. Article 647 provides as follows: "The investigation will be essentially limited to the following points: 1.—to determine the identity of the defendant; 2.—to determine whether the crime attributed to the defendant is among those subject to extradition under the provisions of the treaties in force and, in tne absence of any such treaties, in accordance with the principles of international law; and 3.—to prove whether or not the defendant has in fact committed the crime with which he has been charged."

10. That the identity of the defendants whose extradition has been requested by the United States Government appears to have been legitimately established in legal proceedings and by the evidence presented in support of the petition, as well as by the summary investigation conducted by this court. They have, thus, been identified as Armando Fernández Larios, Pedro Octavio Espinoza Bravo and Juan Manuel Guillermo Contreras Sepúlveda, who are identified and present testimony on pages 59, 72 *verso* and 80, respectively, of the case file; the two first defendants, an Army Captain and Colonel on active duty, and the latter a retired Army General.

11. That Article II of the treaty in force limits the crimes and offenses for which the contracting parties agree to grant a petition for extradition, with N°1 listing "Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary".

12. That the common denominator in the five crimes with which the petition for extradition charges the defendants Fernandez, Espinoza and Contreras as perpetrators and circumstantially referred to in Argument N°1 of the present ruling is that of murder. However, as rightfully expressed by the Prosecuting Attorney to the Supreme Court on page 703, the crimes of "conspiracy", "damages" and "destruction" mentioned on the list included in the first petition for extradition and the other two in Number 5 of the aforesaid petition are not among those which, in accordance with Article II of the Extradition Treaty of 1902 and in its Supplemental Protocol, give grounds to an extradition. Therefore, it is useless to make any further references to such crimes in the present decision inasmuch as the petition for extradition of the defendants, which is founded on such facts, is to be rejected without further argumentation.

13. That, regardless of whether or not the existence of the crimes of murder committed against the persons of Orlando Letelier and Ronni Moffit has been duly determined in accordance with Chilean criminal law, the existence of such crimes appears to have been legitimately established by legal proceedings recorded in the exhibits accompanying the petition for extradition presented by the United States Government which, as mentioned in the last paragraph of Argument No. 1 of the present decision, "have been duly certified as to their authenticity by competent officials of the petitioning government in the manner prescribed by Article III, Paragraph 2 of the 1902 Extradition Treaty signed by the United States and Chile and legalized in conformance with the law in the presence of United States as well as Chilean authorities pursuant to the provisions set forth in Paragraph 1 and in Paragraph 2, Number 3, Article 345 of the Chilean Code of Civil Procedure in harmony with the provisions of Paragraph 1, 2 and 4 Article 186 of the Chilean Code of Criminal Procedure as set forth in the proceedings appearing on pages 7, 8, 9, 10 and 11 of the forementioned original English volume or file whose translations into Spanish appear in these proceedings, which have been checked, in part, by experts appointed by the present court of original jurisdiction, in the form of the following pieces of evidence:

(a) exhibits 1, 2, 3, 4 and 5, namely testimony by Michael Moffit, who occupied one of the back seats in the automobile in which she was riding; by police officers Walter Johnson and Charles Kucmovich, who were among the first to arrive at the scene of the crime and who indicate that they treated the victims, and by FBI special agent Carter Cornick, who indicates that he arrived at the scene of the crime shortly after the crime took place or, in other words, at nine o'clock A.M. on the morning of September 21, 1976, as indicated by the deponents;

(b) exhibits 32 and 36 transcribing the autopsy reports on Orlando Letelier and Ronni Moffit prepared by Drs. James M. Luke and Leroy Riddick, respectively, which conclude that the cause of death for the former victim was "loss of blood, traumatic amputation of the lower extremities, injuries suffered as a result of an explosion; circumstances of death: "homicide", and for the latter victim "inhalation of blood, laceration of the larynx and right carotid artery; injuries suffered as a result of an explosion; circumstances of death: homicide.";

(c) exhibits 14 to 31 consisting of photographs of the scene of the crime taken by FBI agents after the fact showing the condition of the car driven by Letelier, after the explosion;

(d) exhibits 34, 35, 38, 39 and 40, all photographs of the bodies of Letelier and Mrs. Moffit accompanying the aforesaid autopsy reports; and (e) exhibits 76 and 95 consisting of reports by explosives experts Stuart W. Case and William H. Koopan.

14. That as to the involvement of defendants Fernández, Espinoza and Contreras in the deeds alluded to in the petititon for extradition and, more specifically, their alleged involvement in the crimes of murder committed against the persons of Orlando Letelier and Ronni Moffit, the existence of which has been established by the court sitting in the petitioning country and in the present extradition proceedings through the means of proof referred to in paragraph 13 above, in order to limit the line of reasoning leading directly to a determination of whether or not there has been criminal involvement in the deeds on the part of the defendants in accordance with Article I of the Treaty of 1902, it might be desirable to begin with the introduction to an analysis of this point by the attorney for the United States Government appearing on page 257 *verso* as part of his brief beginning on page 238 setting the grounds for the petition for extradition in which he says:

"There are multiple, serious, precise, direct and concordant presumptions of the defendants' involvement in these deeds, which have been presented in the course of the proceeding in the manner outlined in the indictment, all of which are based on real, proven facts and not on other legal or artificial presumptions. There is also abundant testimony and documentary evidence on different aspects of their involvement sufficient not only to force the defendants to undergo trial under Chilean law, but to actually convict them as well".

15. That there do not exist in these proceedings such multiple presumptions of the criminal involvement of defendants Fernández, Espinoza and Contreras in the crimes with which they have been charged in the indictment handed down by the Federal Grand Jury for the District of Columbia in the United States. Nor can it be said that the presumptions characterized as *"well-founded"* by the aforesaid petition are in fact *well-founded* presumptions or can, in fact, be qualified as such under Chilean law (Article 274 of the Code of Criminal Procedure) or under the provisions of the Extradition Treaty of 1902 which has the force of law for both parties thereto, Article I of which stipulates that the Governments of the United States and Chile agree to turn over to the other government any person accused of any of the crimes or offenses specified in Article II who seek asylum or who are found within their own borders—

"provided that this shall only be done upon such evidence of criminality as, according to the laws at the place where the fugitive or person charged shall be found [in this case Chile], would justify his or her apprehension and commitment for trial if the crime or offense had been there committed".

16. That, in fact, a thorough examination of each of the antecedents presented in the proceeding and which are used to infer presumptions of guilt against the defendants immediately shows that all such facts, as indicated by the Fiscal of the Supreme Court in his legal opinion, are essentially either directly or indirectly derived from the accusations made against them by Michael Vernon Townley in his testimony in response to questioning by Assistant U.S. District Attorney for the District of Columbia, Eugene M. Propper, appearing on pages 123 in the translation file and on pages 97 to 143 in the original English file.

In this version of his statement, in which he confesses to having been involved as a principal in the crimes of murder committed against the persons of Orlando Letelier and Ronni Moffit, Townley asserts, in brief, that at or around the end of June or the beginning of July 1976, Army Lieutenant Armando Fernández Larios requested him to come to a meeting with Colonel, formerly Major, Pedro Espinoza, which was to be strictly confidential. In the course of the meeting the latter asked him whether he would accept a special assignment outside of Chile—an assignment which he did accept after laying down certain conditions. In a second meeting held a few days later, Espinoza informed him that "the DINA mission in which he was to take part was for the assassination of Orlando Letelier", that they were to use falsified Paraguayan passports, and that the death was to appear accidental but that the assassination was to be accomplished in any event, even through the use of a bomb, if necessary. He said that Colonel Espinoza had informed him that the Letelier assassination was to be a joint endeavor between himself and Lieutenant Fernández. As part of the assignment, he allegedly accompanied Fernández to Paraguay to obtain false passports. He uses the alias Juan Williams Rose.

while Fernández went by the alias of Alejandro Romeral Jara.

However, they did not continue on to the United States at that time but returned to Santiago under orders received by Fernández. Some time later Colonel Espinoza informed him that Fernández was conducting "preoperative" intelligence in the United States, that the Letelier mission was still on and that he (Townley) was also to travel to the United States and "make contact" with a group of Cuban exiles so that they would do away with Letelier. He traveled to the U.S. under the alias Hans Petersen Silva and was met at Kennedy International Airport in New York by Fernández, who was accompanied by a woman and by his sister Rosemarie. The former was traveling with Fernández to provide him with "cover" for the DINA mission in connection with which he was to collect information on Letelier's movements and lifestyle.

He also stated that Fernández handed him a sheet of paper containing a sketch of Letelier's residence and office, as well as written details on Letelier's and his wife's automobiles. Once in Washington, he worked with the Cuban Virgilio Paz in confirming the information supplied by Fernández and purchased the materials needed to prepare the bomb and to plant it in Letelier's automobile. When the bomb was ready he says personally to have planted it on the outer crosspiece of the automobile chassis under the driver's seat, fastening it with adhesive tape which he had purchased earlier for this very purpose. All these events are said to have taken place on September 19, 1976. On the 21st he was advised by Ignacio Novo Sampol that "something had happened in Washington". He returned to Santiago on September 23rd, reporting directly to Colonel, or at that time Major, Pedro Espinoza Bravo.

As to Colonel Contreras, who was director of DINA at the time of Letelier's assassination, the version of Townley's same statement reads more or less as follows: In March of 1978 as a result of some letters rogatory sent by the United States government (requesting that he be surrendered to police officers) but before his photograph and the name Juan Williams Rose had been published in the Santiago press,

"I met with General Manuel Contreras Sepúlveda concerning the future strategy to be followed in answering any questions which might be raised with respect to my trip to Paraguay with Captain Fernández and our subsequent trip to the United States to assassinate Letelier." He then adds: "we met in an automobile and drove around Santiago while Contreras suggested that I immediately flee Chile to avoid being questioned and that when I refused to leave he thought up a plan whereby I was to answer any questions as follows: I went to Paraguay on an official DINA mission. I was to give no details, citing reasons of national security. I returned to Santiago from Paraguay after completing my assignment for DINA. I never traveled to the United States on any DINA mission. If they interrogated me further, I was to admit that Captain Fernández and I had planned to travel to the United States on assignment for DINA whereby we were to obtain a list of U.S. politicians who were sympathetic to the Chilean cause. However, the mission was never accomplished."

Townley also states that this meeting was followed by yet another interview with Contreras and Armando Fernández to go over what they were going to say about this trip to Paraguay, adding that Espinoza was not present and took no part whatsoever in any of these meetings. Another part of his statement reads as follows:

"As to what I know about how DINA operated, being, as I was, with the agency almost from the beginning, I know that no one in DINA, with the sole exception of Manuel Contreras, was authorized to order the accomplishment of a mission outside of Chile, particularly something like an assassination. Furthermore, only General Contreras was empowered to authorize the issue of false identification papers such as passports and only he could authorize the disbursement of any funds."

Following the investigation conducted by the U.S. District Attorneys' Office through Assistant Attorneys for the District of Columbia Messrs. E. Lawrence Barcella and Eugene M. Propper and, in general, through the intermediary of special agents attached to the Federal Bureau of Investigation (FBI), as well as the investigation by the Grand Jury attached to the U.S. District Court for the District of Columbia, it is easy to see that all the statements presented by the witnesses, the depositions made by FBI agents, all the exhibits, photographs, copies of bills of sale for electronic and other types of components, the list of passengers and fares traveling by air from Chile to the United States and vice versa, the identification papers and the other documents presented, most of which are unofficial instruments, were simply a means of corroborating the statements made by Michael Townley for the obvious purpose of proving the truth of the accusations against defendants Fernández, Espinoza and Contreras made by Townley in his aforementioned statement, as dramatically demonstrated by a simple examination of the analysis of "arguments" presented by U S. government attorney Mr. Etcheberry appearing on page 257 *verso* through page 299 *verso* and included in his brief beginning on page 238 used as grounds for the extradition petition.

17. That, however, none of these previous investigation proceedings carried out by the Office of the U.S. Attorney or the judicial actions conducted by the Grand Jury of the District Court of the United States give grounds to deduce "well-founded presumptions" of guilt to the effect that Townley received, through Pedro Espinoza, the order or mission of murdering Orlando Letelier and, consequently, Ronni Moffit, which order is said to have been issued by Juan Manuel Contreras when, as a colonel in the Chilean Army, he was Director of National Intelligence (DINA), and that Captain Armando Fernández Larios participated directly in such plot by order of Contreras and under the leadership of Espinoza as Chief of Intelligence Operations of DINA, when the latter was assigned there with the rank of Lieutenant Colonel in the Army during the months of August and September 1976, when the events that gave rise to the extradition occurred, and, in view of the fact that the murders of Letelier and Ronni Moffit, as has been established in this trial, were perpetrated in Washington, D.C., U.S.A., on September 21, 1976. [sic]

18. That Michael Townley's statement, despite Townley's unquestionable status as perpetrator of the aforementioned murders, must be considered the statement of a witness under the definition of that word in the Dictionary of the Royal Academy of the Spanish Language:

"A person who witnesses or gains direct and true knowledge of something";

However, because the statement in question is that of a singular witness, in order that it may be considered conclusive, and so that the weight of evidence may be attached to it with the scope of "a well-founded presumption", it is necessary to take into account, together with it, not only such other background as may serve to verify it, as herein done, but very specially, the impartiality of the witness, whether he has been consistent, and the circumstances in which were made the statements that are being used to support the charges against the accused.

19. That, with respect to Townley's impartiality and the circumstances in which were made the statements charging Fernández, Espinoza, and Contreras, it should be pointed out that, as recognized by United States attorney Etcheberry in folio 270, *verso*, of the document beginning in folio 238, on which he bases the request for extradition, before Michael Townley made his statement to Deputy Attorney Eugene M. Propper, he concluded an agreement with the Government of the United States on April 17, 1978, through the District of Columbia Attorney, the text of which agreement appears in the statement made to the District of Columbia Grand Jury by María Inés Callejas, Townley's spouse, which appears in folio 188 of the Translations file, and paragraph 6 of which reads literally as follows:

"The United States agrees not to bring legal action against Michael Vernon Townley for any other crimes that it may discover which occurred before the date of this agreement. That date is April 17. It is understood that the United States does not have knowledge on the date of this agreement that any crime of violence has been committed in the United States involving Michael Vernon Townley, except for the case of Orlando Letelier and Ronni Moffit. The United States also agrees not to bring legal action against the wife of Michael Vernon Townley—Mariana Callejas H. Townley—for any crime that it may discover. This agreement not to bring legal action does not apply to crimes of violence, as that term is defined in Title 23, D. D. Code, Section 1331 (4). It is understood that the United States does not have knowledge on the date of this agreement of any crime by Mariana Callejas H. Townley."

[Translator's note: the foregoing quotation has been translated without reference to its original text.]

20. That, in those conditions, it is obvious that Townley's statement confessing to his participation in the murders in question and implicating as accomplices Fernández, Espinoza, and Contreras, is a "Compensated Declaration", since in return for it he is "exempted" from direct criminal liability for the murders of Letelier and Ronni Moffit, with the Government of the United States agreeing "not to bring legal action against Michael Vernon Townley" and promising, in addition, "not to bring legal action against the wife of Michael Vernon Townley—Mariana Callejas H. Townley—for any crime that it may discover.

21. That, consequently, it must be concluded, in view of such promises, which denature the criminal procedure and diminish the strength of the credibility of the persons they favor, that Townley's incriminating statement lacks impartiality; it was undoubtedly made under the influence of the aforementioned "agreement" and, therefore, it cannot be considered evidence with the scope of a "well-founded presumption" of guilt against the accused.

22. That, moreover, the lack of consistency of the various statements made by Townley regarding his participation in the crimes under consideration, in some of which he denies direct and culpable participation in the acts and acknowledges it in others, as has been established in this record (statement mentioned in ground N° 16 and statement made to Military Judge Hector Orozco in the proceeding for "false documents et al"), strengthens what has just been expressed in the preceding paragraph and undermines the credibility of his assertions.

23. That, with respect to the statement of Mariana Ines Callejas to the Grand Jury of the United States District Court in the District of Columbia, which appears in folios 187 et seq. of the Spanish Translations File, after she was advised by Deputy Attorney Barcella of the existence of the "agreement"

between the Government of his country and her husband, Michael Townley, which agreement is transcribed in Whereas clause N° 19 of this decision, in which statement she says that she knew about the order to get rid of Orlando Letelier, which order, according to what her husband told her, had been given him by Pedro Espinoza, it should be pointed out that, in the Court's opinion, the hearsay testimony of Mrs. Townley lacks impartiality and cannot be given the weight of a "well-founded presumption" of guilt for the same reasons adduced in ground N° 21 of this decision in considering the incriminating statements made by Michael Townley.

24. That, as a logical corollary to that set forth in whereases 6 to 23, the judge pronouncing the decision considers that, up to this point in the case, there had not been attached nor produced such evidence of guilt against Fernández, Espinoza, and Contreras, the accused, as according to Article I of the 1902 Treaty and Chilean law—especially that established in Article 274(2) of the Code of Criminal Procedure warrants their "apprehension and commitment for trial" in the event the crimes of murder of Orlando Letelier and Ronni Moffit had been committed in Chile. Consequently, the extradition request presented by the Ambassador of the United States of America in the name of his government should be rejected.

25. That, it therefore seems even more advisable to the court to refer to that agreed to in Article V of the 1902 Treaty by the Governments of the United States and Chile, both because this matter is dealt with extensively in folio 238 of the brief submitted by Attorney Etcheberry, representing the Government of the United States, in the chapter titled "The Option of Surrendering Nationals" which begins on folio 300, and because other reasons for a rejection of the extradition request can be derived from the examination and application of that treaty by the courts of the United States.

26. That in Article I of the aforementioned 1902 Extradition Treaty it is agreed that:

"The Government of the United States and the Government of Chile mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committee within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other . . ." etc., and it is further agreed in Article V that:

"Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty."

The opinion handed down by United States Court 299, October 1936 term, states that:

"The persons named in the extradition request filed *habeas corpus* to prevent their extradition to France under 1909 Treaty. 37 Statute 1526. They are citizens born in the United States and are accused of committing crimes in France that appear among the extraditable offenses specified in the treaty. Having escaped to the United States they were arrested in New York City upon the request of the French authorities by virtue of a preliminary order issued by a United States Commissioner and were arrested as a part of extradition proceedings. The writ of *habeas corpus* contested the basis of the Commissioner's jurisdiction inasmuch as the treaty exempted United States citizens and the President had no constitutional authority to deliver up to the French authorities the persons named in the extradition request." [3]

The governing provisions of the treaty are the following:

ARTICLE I

"The Government of the United States and the Government of France mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed."

ARTICLE V.

"Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

The Court of Appeals of this Circuit, vacating the orders of the District Judge, upheld the allegation of the accused and ordered the stay. 81 F (2d) 32. This Court granted certiorari."

The District Court of Appeals for the Second District of the City of New York upheld this decision on, among others, the following grounds:

"It is a customary rule that treaty obligations should be liberally interpreted in order to be consistent with the clear intent of the parties. Tucker v. Alexandroff 183 U.S.A. 424, 437; Jordan v. Tashiro, 278 U.S.A. 123, 127; Factor v. Laubenheimer, 290 U.S.A. 276, 293, 294. However, in this instance, there is no doubt concerning the interpretation of the obligations set forth in the treaty. The treaty explictly denies any obligation to deliver up citizens in a state of asylum—'Neither of the contracting parties shall be bound to deliver up its own citizens'." [4]

Inasmuch as Article V stipulates that neither of the two parties shall be bound to deliver up its own citizens, such citizens are necessarily excepted from the agreement set forth in Article I and from the "persons" described therein. The fact that the exception is contained in a separate article does not alter its effect.

This effect is precisely the same one that led to the provision in Article I that both Governments "shall agree mutually to surrender persons other than their own citizens or individuals".

Of such greater significance is the fact that one common clause, used in many of our treaties and authorizing the exception of nationals by expressly granting discretionary authority to surrender them, was omitted in the treaty with France.

The 1886 treaty with Japan stipulates in Article VII:

"Neither Contracting Party shall be bound to surrender its own citizens or individuals under this Treaty, but they may do so if at their discretion they deem that appropriate".

A similar stipulation is included in the extradition treaties of 1896 with Argentina and of 1896 with the Orange Free State. The treaties with Mexico (1899), Guatemala (1903), Nicaragua (1905), and Uruguay (1905) expressly place the discretional authority in the "executive authority". We thus find the following article (Article IV) in the 1899 treaty with Mexico:

"Neither Contracting Party shall be bound to surrender its own citizens under the stipulations of this agreement, but the executive power of each will have the authority to surrender them if, at its discretion, it deems it appropriate to do so. . . ."

Applying, as we must, our own laws in determining the powers of the President, we are obligated to maintain that his power, in the absence of any statute vesting an independent power in him, must be based on the terms of the treaty, and that, since the treaty with France does not grant the necessary authority, the President does not possess the power to surrender the persons sought. Regrettable as such lack of authority may be, any move to supply it is a matter for the Congress or the treaty-making authorities, provided that the Parties agree to allow the surrender of their nationals, and not for the courts.

27. That, nothing being known to indicate otherwise, this is apparently the consistent jurisprudence of United States courts in all cases in which extradition treaties with other countries provide for the exception established in Article V of the Treaty with the Republic of Chile, viz.

"Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty".

If it is known in advance how the United States courts will apply this clause in cases in which Chile as the requesting State might seek extradition of a U.S. citizen, no moral obligation to accede to the extradition request in question would be discernible even if the evidence presented against the defendants met the requirements established by the 1903 treaty and Chilean law.

28. That on folio 305 *verso* of the observation on which the United States Government Attorney bases his argument for extradition we find the following statement cited from United States Jurisprudence:

"Nevertheless, as it has been mistakenly said out of this Court that the United States would never have granted a foreign country extradition of a U.S. citizen, we shall cite what are merely a few representative examples: extradition of Bias Aguirre, (murder, granted March 26, 1900); extradition of George P. Monroe (murder, granted January 8, 1912); extradition of Juan Delgado Ortiz (robbery with murder, granted December, May 12, 1939); extradition of Robert W. Hart, Gerald Bellis, and Leroy Downing (armed robbery, granted July 19, 1957)".

However, the enumeration of those cases of extraditions said to have been granted by United States courts is not accompanied by any indication as to the requesting State and the terms of the respective treaties: it is not said whether or not the treaties contained the exception clause included in Article V of the Treaty of 1902 with Chile; therefore, the assertion just quoted is irrelevant to the question under examination.

The foregoing is confirmed precisely by the reference with which Mr. Etcheverry next proceeds to "Charlton c. Kelly, 229 U.S. 447 (1912), in which the U.S. Supreme Court confirmed the extradition of a U.S. citizen sought by Italy. The decision says:

"The conclusion we reach is, that there is no principle of international law by which citizens are excepted out of an agreement to surrender 'persons' where no such exception is made in the treaty itself. Upon the contrary, the word 'persons' includes all persons when not qualified as it is in some of the treaties between this and other nations. That this country has made such an exception in some of its conventions and not in others, demonstrates that the contracting parties were fully aware of the consequences unless there was a clause qualifying the word 'persons'. This interpretation has been consistently upheld by the United States, and enforced under the several treaties which do not exempt citizens".

Any other commentary would be useless in view of this decision of the United States Supreme Court which removes any doubt about the matter in question.

29. That, in order to justify the decision that will duly be made and in compliance with Article 83(2) of the Code of Criminal Procedure, some of the contradictions and

[3] [Translated without reference to the original.]

[4] Translated without reference to the original.

absurd or contradictory responses to certain facts established in the proceeding during the investigation conducted by this Court should be made a matter of record.

(A) The accused Armando Fernández Larios says in his statement (folio 63) that in his trip to the United States at the end of August 1976 he was the "support agent" for a woman named Liliana Walker Martinez, who was to carry out a mission in that country. They traveled in a Braniff plane from Pudahuel to Miami and then proceeded in an Eastern Air Lines plane to Washington (this last fact verified by the Court's inspection of folio 51 *verso*) where they took one room in a hotel as if they were a married couple. However, the accused Pedro Espinoza and Manuel Contreras in their statements, folios 72 *verso* and 80, respectively, say that this mission of Liliana Walker was to be carried out in the offices of Corfo-Codelco in New York.

Fernández Larios traveled with Liliana Walker, and slept with her in a room in a hotel in Washington as if they were married, on a trip that lasted 15 days, and he states that he does not know who she is, why she went to the United States, and he cannot identify her.

(B) On folio 82 *verso* of his statement, the accused Manuel Contreras says:

"I never knew this Mrs. Callejas as an informant or 'ear' of the DINA, so I do not believe that she worked in any way for the service".

However, this Mrs. Callejas, whose name is Mariana Inés Callejas Honores, appears on the identification card issued by the Central Nacional de Informaciones [National Intelligence Agency] as "A Pizarro" and, according to the statement of Army Captain Cristoph Georg Willike Floel (folio 95) (who worked in the DINA and in its successor, the aforementioned C.N.I., from 1973 to July 1978) this identification card is signed by the former Director of the Service, Colonel Manuel Contreras Sepúlveda. Moreover, it was determined in the court's inspection of folio 103 that the identification card with the name "A. Luisa Pizarro Aviles" and the existing photograph in the identification files that corresponds to "Inés Callejas Honores" are of the same person, namely "Inés Callejas Honores".

In the personal investigation of folio 136 at the Military Hospital of this capital, the patient's record of release from that establishment—a photocopy of which appears with N° 102 of the file of documents accompanying the extradition request with the name of Ana Luisa Pizarro Aviles—was shown to María Angélica Munóz Mendoza, the gynecology assistant, and the signature of the physician stamped on that card immediately was recognized by Muñzo and by Dr. Juan Lombari Borgoglio, a colonel in the medical service and the director of the Military Hospital, as being that of Dr. Oscar Novoa Allende. Dr. Novoa, in his statement on folio 141, acknowledges that all the writing on that release record is in his own handwriting. The patient entered the hospital on August 7, 1976, and was released on August 14, 1976, as stated on the release record.

For those reasons and pursuant to the provisions of Article 653 of the Code of Criminal Procedure,

It is declared:

1. In view of what is set forth in grounds 1–8, it is contrary to law to accept the objections stated in the first complementary petition of the pleading of folio 502;

2. The request for extradition brought by the Ambassador of the United States, in the name and as representative of his government, against the accused Armando Fernández Larios, Pedro Octavio Expinoza Bravo, and Juan Manuel Guillermo Contreras Sepúlveda, is denied, and they are to be released if this decision becomes a final judgment; and

3. A certified copy of this decision shall be duly transmitted to the Second Military Court in Santiago for the purposes of preparation of the appropriate proceeding, if one is not already in progress, to investigate, in conformity with the provisions of Article 3(2)(2) of the Code of Military Justice, what responsibility may be charged to Fernández, Espinoza, and Contreras in the murders of Orlando Letelier and Ronni Moffit in Washington, D.C., U.S.A. on September 21, 1976.

To be reviewed if not appealed.

This decision to be recorded.

———— ————.

Handed down by Israel Borquez Montero, President of the Supreme Court of Justice of Chile.

———— ————.

ADDRESS OF CHAIRMAN A. LEE FRITSCHLER BEFORE NATIONAL ASSOCIATION OF POSTMASTERS

Mr. STEVENS. Mr. President, recently the new Chairman and Vice Chairman of the Postal Rate Commission, A. Lee Fritschler and James Duffy, were sworn into office. Their swearing-in marked the close of an outstanding stewardship by former Chairman Clyde DuPont. Clyde, as many of you know, was Senator Hiram Fong's chief assistant, and has done an excellent and commendable job as Chairman of the Postal Rate Commission. Clyde's continued service on the Commission, I know, will benefit this Nation. I want to take this opportunity to not only commend Clyde in his achievements, but to wish the new Chairman every success, as well.

Recently, Chairman Fritschler addressed an organization of dedicated individuals, the National Association of Postmasters of the United States. Chairman Fritschler's comments deserve close attention for he has succinctly outlined the role of the Postal Rate Commission and emphasized the problems and issues which they face in the coming years.

Mr. President, I ask unanimous consent to insert at the end of my remarks the complete text of Chairman A. Lee Fritschler's comments before the National Association of Postmasters of the United States on September 27, 1979.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH OF CHAIRMAN A. LEE FRITSCHLER

Good morning. I want to thank Ms. Turney, Mr. Copham, and Mr. Miklozek for giving me the opportunity to speak with you this morning.

As a newcomer to the postal system, I am pleased to have the chance to speak to this important group of postmasters. I have spent much of my time during the past two months immersing myself in postal matters in general, and specifically, in the issues before the Commission. I have learned a great deal about the postal service in this country through my visits to a large number of postal facilities and by participating in meetings, such as this NAPUS conference. Talking with folks like you who are charged with implementing postal policies is the best way to learn about the Postal Service. I am impressed with your accomplishments and your dedication to the public service.

My colleague, Simeon Bright, was here yesterday to present you with an overview of the PRC—its authority and areas of responsibility. I would like, this morning, to discuss those elements of PRC activity that directly impact your role in the Postal Service. I also want to talk about my goals for the future of the Commission.

The Postal Service was established in 1970 as part of the Postal Reorganization Act. The Act, a result of the 1968 report of the Kappel Commission, set up an independent establishment that would serve the Nation's need for an efficient and economical postal system. The primary goal in this new, independent Postal Service was the achievement of a self-sustaining, professionally managed modern industry responsive to the public interest.

The Rate Commission was also established in 1970. It was charged with setting the prices of postal services upon the periodic request of the Service, based upon supporting data and presented in fully open public hearings. In addition, as Commissioner Bright indicated yesterday, the Commission has authority over mail classification changes, changes in the nature of postal service, complaints, and the closing of small post offices. I realize that the latter area is of particular national concern. The PRC has commissioned an independent study to look at the role played by the post offices in small communities, and to assess the impacts of post office closings.

To analyze and work with the Postal Service is a complex and time-consuming task. Expediting our case load and streamlining our own regulatory processes is of particular concern to me. The analysis of data and testimony, which consumes thousands of pages, is a difficult job requiring the skills of carefully trained professionals. The Commission employs a highly qualified staff of 40 professionals. They are assigned to technical and legal analysis and have backgrounds in law, economics, operations research, rate analysis, accounting and auditing. Many of them have years of experience with other regulatory bodies.

The PRC has a unique regulatory role. We are the only regulatory body whose sole function is overseeing another Federal agency. It is natural for tension to exist when one body regulates another. Regulation is not pleasant—the word itself has negative connotations. When two Federal agencies are established simultaneously—as we were—each mandated to establish itself in the same public service area, there will be friction probably beyond what is normal in a regulatory situation.

The friction must be overcome so each agency can attempt to establish its own management boundaries and find roles which are mutually supportive—not hostile, but critical, tough and supportive. Open, fair and tough minded regulation is a public service. Furthermore, it is important to the Postal Service itself, and the industries and employees associated with it. Regulation, properly done, assures the public and all those connected with the postal business that rate and mail classification proposals, for example, have stood the test of public and professional scrutiny in an open, quasi-judicial forum. The results of a sound regulatory process are confidence in and public support of decisions made.

There are several contentious issues involving the relationship between the Postal Service and the Commission. Officials of both agencies recognize most of these problem areas and are moving to establish a cooperative and workable climate. There will be occasions in the future when we will disagree. There will be times when we render decisions which could be misinterpreted. I ask for a careful reading of our decisions and no prejudgment. I pledge to the postal community that I will work for decisions which will benefit us all—the public, the postal employees, the postal business community and the Service itself.

Successful, useful regulation must be conducted in an environment of full cooperation and information sharing. In order for the PRC to continue streamlining its regulatory procedures and to enable the Service to be responsive to the public's needs without undue delay—cooperation, information and trust must be the code words between the two agencies. At times our decisions are delayed because of a lack of appropriate data. The Service must understand that we can only move ahead when accurate and complete data are provided in a timely manner.

The Commission has recently responded to the needs of a modern Postal Service by calling a public conference to discuss the implementation of new rules and procedures for experimental mail service proposals. Instead of requiring a full-scale, on-the-record evidentiary hearing procedure, a more streamlined procedure is being considered. This procedure would remove some of the time-consuming formalities of an evidentiary hearing and reduce or eliminate the need to provide data where virtually no data exists. The PRC and the Service might go a step further and work jointly to seek legislation which would authorize temporary, limited implementation of experimental services using rulemaking processes rather than trial-type or quasi-judicial hearing processes.

Although I cannot review all of the substantive points presently before the Commission, you might be interested in a brief summary of the dockets currently pending.

The Commission is presently in its final decision phase of a Service proposal to offer lower rates for bulk mail machinable parcels. There would be a surcharge on nonmachinable parcels as well, and the rates would distinguish between intra-BMC area parcels and those moving between BMC areas. The issue in this case is whether or not the Postal Service has shown that cost differentials justify the proposed rate differentials. Of course, as with any parcel post case, there is always the issue of competition between the Service and private carriers in a highly competitive industry.

Another case nearing decision involves electronic computer originated mail. This case provides a new challenge to the PRC in that it involves the highly technical issues of telecommunication methods and computer sciences. The issue of market competition is a major concern to the PRC. Issues have been raised as to the proper role of the Service in the field of electronic communications, as well as what type of system configuration would offer the best electronic mail service to the public.

We anticipate that both the parcel post and E–COM decisions will be issued before the end of the year.

Other dockets before the Commission concern the possibility of a red-tag surcharge for second-class mailers, a reduction for non red-tag second-class mail, expansion of eligibility for red-tag treatment, discounts for third-class carrier route presorts, and Express Metro Mail Service—which the Service states will increase the usefulness of the Postal Service to those who require high-speed service within a metropolitan area.

Each of these cases and issues pose potential major impact for both large mailers and "Aunt Minnie." It is, therefore, understandable that they are highly charged issues creating areas of tension and problems for the Service and the PRC.

There are four phases in a regulatory agency's life cycle—Gestation, Youth, Maturity and Old Age. During the first cycle, gestation, a rather pronounced degree of social momentum leading to the development of enabling legislation establishing the regulatory body takes place. The establishment of the PRC and the Service was the result of a need to improve the efficiency of the postal system. During the early 1970's both the Service and the Commission worked to clarify their roles.

The PRC now is in its youthful stage. Kenneth Culp Davis describes the youthful regulatory agency as one "dominated by the qualities of youth—noted for its energy, ambition and imagination." The PRC has set regulatory precedent in several court cases and has begun to establish itself as a model regulatory commission in its administrative process. The PRC commissioners are dedicated and committed to innovation in the highly technical and specialized fields within its jurisdiction.

The next regulatory cycle, "maturity," will be reached only when postal regulation becomes more settled and understood by all parties. It is to this next level that I will be working to bring the Commission during the next several years in a cooperative effort with the Service.

The PRC has come a long way in improving regulatory management in the last few years. The Commission has done away with the process of holding hearings before an Administrative Law Judge. The alternative of having the Commissioners sit together, with one of our five commissioners presiding, has eliminated the time involved in evaluating a judge's written decision. The PRC has taken other steps to streamline and improve its work. All decisions regarding postal rates are issued within a 10-month time frame. The Commission has also taken steps, as I mentioned, to limit full hearings for experimental service requests. We have recently reorganized the internal units within the Commission, bringing the technical and planning units together and improving the coordination between that unit and our legal staff. Combined these actions have aided our administrative procedures and have enabled us to operate as an effective regulatory body.

I believe our recent actions at the Commission can serve as an example of regulatory reform. President Carter has strongly encouraged regulatory bodies—and indeed has introduced legislation—to reduce delay in agency proceedings by streamlining hearing procedures, increasing reliance on written submissions and increasing the effectiveness of public participation. He has done more to improve the regulatory process than any modern president. This administration has established a regulatory council composed of representatives from each regulatory agency and executive department. The PRC has taken an active role in the work of the council and will continue to do so. The council will soon be publishing its second regulatory calendar, a compendium of major regulatory agency activities. The PRC has been a major contributor to the calendar—further evidence of its commitment to a leadership role in the processes of streamlining regulatory management. The PRC will be issuing bi-weekly summaries of activities beginning in October as well as an annual report. Where appropriate, other management innovations will be introduced at the commission, both to facilitate our work and to make certain our work is understandable to the public.

There are many issues lying ahead for the Commission as it continues to mature. The postal system of the United States must continue to find ways to meet increased demand, and new technological challenges. The Commission must and will cooperate in facilitating these goals.

The Commission has traveled a great distance in nine years. I look forward to the challenges in my new role and hope that together we can continue to provide the public with the kind of first-rate postal service it demands and deserves.

Thank you very much.

VISIT OF POPE JOHN PAUL II

Mr. HEFLIN. Mr. President, in this time of national malaise, concern over Soviet troops, energy uncertainty, and worldwide inflation, the visit of Pope John Paul II comes as a most remarkable and welcome event.

This man, religious leader of the world's 700 million Roman Catholics, has given this Nation and the world something better to think about than our problems. He has shared with us his wisdom, vision, and love, and has given us his counsel.

Pope John Paul II, the first non-Italian Pope in more than four centuries, has proven himself truly a citizen of the world. His dignity, humility, compassion, and unrelenting faith in God and His creations have given the people of this beleaguered world desperately needed respite from despair—and possibly the hope, will and determination to strive for a more perfect earthly life.

The First Lady, Mrs. Rosalynn Carter, said in welcoming the Pope to the United States Monday that he has touched the world as few have ever done before. This is certainly correct.

The Pope is a man of strong moral and fundamental beliefs—and he is not afraid to voice his views.

Pope John Paul has shown courage throughout his life. As Archbishop of Cracow, Poland, under a Communist regime that restricted religious activity, the Pope spoke out for religious freedom.

Earlier this year he returned to his native land and again braved official repression to speak out for the Polish peoples' right to religious freedom. His visit to Poland has rekindled the spirit of the people of that nation.

In Ireland this week he also spoke out strongly. He condemned the violence and terrorism that have ravaged that island nation for decades. He braved threats of violence against himself to carry on his sacred mission of peace and justice.

But the Pope recognizes that hatred, violence, and selfishness not only threaten strike-torn Ireland or Communist bloc nations, but the entire world.

Pope John Paul has begun to give his advice to us in the United States, and I hope and pray the millions of people who will hear him this week will heed it.

He has given us an affectionate but stern warning not to lose sight of the noble principles upon which this great Nation was founded. He has embraced our people with the love and joy that he became famous for and he has pleaded with us to "fulfill our noble destiny of service to the world."

Before we can meet the Pope's challenge it is essential that we reexamine our goals and principles and return to basic beliefs in moral discipline, family orientation, brotherhood, compassion, education, and religion.

The Pope was eminently veracious when he admonished our young people not to be afraid of honest effort, hard work, truth, and justice—these are the basic American qualities that built this Nation.

I welcome Pope John Paul II to the United States and I welcome his challenge to us.

VISIT OF POPE JOHN PAUL II

Mr. PELL. Mr. President, it was a great honor and pleasure for me to be in Bos-

ton the day before yesterday to join in welcoming His Holiness, Pope John Paul II, to the United States. It was particularly gratifying that His Holiness began his visit in New England, and I was deeply touched by the tremendous outpouring of affection and respect on the part of New Englanders for the newly chosen Pope.

Pope John Paul II is destined, in my view, to become one of the most popular and beloved Pontiffs in history. He combines down-to-earth qualities, to which every man, woman, and child can personally relate, with a truly inspirational vision of mankind and individual worth that uplifts everyone with whom he comes into contact.

Pope John Paul II has demonstrated, in recent visits to Poland and Ireland, that the appeal of his words and actions is universal. What better leader, therefore, for a universal church than this wonderful man? His Holiness' visit comes at a time of great social and spiritual uncertainty in our country, and I am confident that all Americans, of whatever faith, look forward to being touched, even if indirectly, by the wisdom and genuine love that Pope John Paul II has to offer.

I believe that as time goes on his impact will continue to grow. It has already gone beyond the circles of those who are Catholic, and it will soon have an impact throughout Christendom and then will come to permeate the world. I believe he will prove to be the largest single figure on the world stage of the coming decade.

MESSAGE FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 12:22 p.m., a message from the House of Representatives delivered by Mr. Guthrie, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 303. Joint resolution authorizing and requesting the President of the United States to issue a proclaimation designating the 7 calendar days beginning October 7, 1979, as "National Port Week."

The enrolled joint resolution was subsequently signed by the Vice President.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-2250. A communication from the Under Secretary of Agriculture for International Affairs and Commodity Programs, transmitting, pursuant to law, the initial commodity and country allocation table showing the planned programming of food assistance under title I of Public Law 480; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2251. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Two Contracts for Nuclear Attack Submarines Modified by Public Law 85-804—Status as of December 23, 1978"; to the Committee on Armed Services.

EC-2252. A communication from the Under Secretary of Energy, transmitting, pursuant to law, a modification to the power agreement between Ohio Valley Electric Corp. and the United States; to the Committee on Energy and Natural Resources.

EC-2253. A communication from the Deputy Assistant Secretary of the Interior for Indian Affairs, transmitting, pursuant to law, a proposed plan for the use and distribution of Yankton Sioux judgment funds in docket 332-C-1 before the U.S. Court of Claims; to the Select Committee on Indian Affairs.

EC-2254. A communication from the Assistant Attorney General for Legislative Affairs, Department of Justice, transmitting, a draft of proposed legislation to amend the jurisdiction and venue requirements and damage provisions in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

EC-2255. A communication from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, interim final regulations establishing standards relating to audits, records, financial responsibility, administrative capability, institutional refunds, and misrepresentaton (20 U.S.C. 1088f-1 497A of the Higher Education Act of 1965, as added by section 133 of Public Law 94-482, Education Amendments of 1976); to the Committee on Labor and Human Resources.

EC-2256. A communication from the President of the United States, transmitting an amendment to the request for appropriations for the fiscal year 1980 for the Department of the Treasury in the amount of $20,000,000,-000; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENSON, from the Select Committee on Ethics, without amendment:

S. Res. 249. An original resolution concerning the Select Committee on Ethics' investigation of Senator HERMAN E. TALMADGE (together with additional views) (Rept. No. 96-337).

By Mr. HART, from the Committee on Armed Services, without amendment:

S. Res. 250. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 595. Referred to the Committee on the Budget.

By Mr. HART, from the Committee on Armed Services, with an amendment and an amendment to the title:

H.R. 595. An act to authorize the Administrator of General Services to dispose of 35,000 long tons of tin in the national and supplemental stockpiles, to provide for the deposit of moneys received from the sale of such tin, and for other purposes (Rept. No. 96-338).

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment:

S. 74. A bill for the relief of Puangpaka Vertrees and Puangtip Vertrees (Rept. No. 96-339).

S. 122. A bill for the relief of Clarita Valdez Aragones (Rept. No. 96-340).

S. 132. A bill for the relief of Dirk Vierkant (Rept. No. 96-341).

S. 173. A bill for the relief of Duk Chan Byun, his wife Yung Ja Byun, and his children Hye Ja Byun, Hye Sun Byun, Hye Ryung Byun, and Yung Eun Byun (Rept. No. 96-342).

S. 1578. A bill for the relief of Dr. Halla Brown (Rept. No. 96-343).

H.R. 898. An act for the relief of Rodney L. Herold and others (Rept. No. 96-344).

H.R. 929. An act for the relief of Eun Kyung Cho and Hei Kyung Cho (Rept. No. 96-345).

H.R. 946. An act for the relief of Maria Estela Sims (Rept. No. 96-346).

H.R. 1153. An act for the relief of Nyoman Rahmawati (Rept. No. 96-347).

H.R. 1163. An act for the relief of Gladys Venicia Cruz-Sanchez (Rept. No. 96-348).

H.R. 1486. An act for the relief of Dang Peterson (Rept. No. 96-349).

H.R. 1628. An act for the relief of Susan Katherine Adamski (Rept. No. 96-350).

H.R. 1753. An act for the relief of Sergio and Javier Arredondo (Rept. No. 96-351).

H.R. 2098. An act for the relief of Antonio Rivera Aristizabal (Rept. No. 96-352).

H.R. 3142. An act for the relief of Michael Carl Brown (Rept. No. 96-353).

H.R. 3146. An act for the relief of Patrick A. and Wayne L. Thomas (Rept. No. 96-354).

H.R. 3218. An act for the relief of Rebecca Sevilla DeJesus (Rept. No. 96-355).

By Mr. KENNEDY, from the Committee on the Judiciary, with an amendment:

S. 274. A bill for the relief of Sang Sun Russo (Rept. No. 96-356).

By Mr. LONG, from the Committee on Finance, without amendment:

S. 493. A bill to promote the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes (Rept. No. 96-357).

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, COMMITTEE ON THE JUDICIARY, EXPENDED BETWEEN JULY 19 AND SEPT. 5, 1979

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Barney D. Dusenbury: Switzerland	Swiss franc	313.35	192.00					313.35	192.00
Jerry M. Tinker: Switzerland	Swiss franc	313.35	192.00					313.35	192.00
Richard W. Velde: Switzerland	Swiss franc	313.35	192.00					313.35	192.00
Jan H. Kalicki: Korea	Won	72,600	150.00					72,600	150.00
Jan H. Kalicki: China	Yuan	461.97	300.00					461.97	300.00
Total									1,026.00

Sept. 28, 1979.

EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES, EXPENDED BETWEEN AUG. 3 AND AUG. 25, 1979 [1]

Name and country	Name of currency	Per diem: Foreign currency	Per diem: U.S. dollar equivalent or U.S. currency	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency
S									
Tenator Henry M. Jackson: China	Yuan	1,203.24	781.37					1,203.24	[2] 781.37
Travel within China				1,606.40	1,043.18			1,606.40	1,043.18
ransportation United States/China/United States					2,051.61				2,051.61
Total			781.37		3,094.79				3,876.16

[1] Arrived Seattle, Wash., Aug. 25, 1979, returned Washington, D.C., Sept. 4, 1979.

[2] For record: Refund to U.S. Government of unused portion of per diem while in China: Yuan 834.00 equals $541.59. Returned to: U.S. Disbursing Officer, American Embassy, Beijing.

Sept. 28, 1979.

HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, COMMITTEE ON FOREIGN RELATIONS, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1979

Name and country	Name of currency	Per diem: Foreign currency	Per diem: U.S. dollar equivalent or U.S. currency	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency
Jacques J. Gorlin:									
France	Franc	1,139.4	270.00	100	23.70			1,239.4	293.70
Switzerland	Franc	478.35	288.00					478.35	288.00
United States	Dollar				943.00				943.00
Richard L. McCall:									
Egypt	Pound	1,055	1,507.00	19.9	30.66			1,074.9	1,537.66
United States	Dollar				975.80				975.80
Johannes A. Binnendijk:									
Algeria	Dinar	250	58.00					250	58.00
Morocco	Dirham	1,652	435.00					1,652	435.00
Egypt	Pound	409	585.00	19.9	29.00			428.9	614.00
United States	Dollar				2,257.80				2,257.80
Stanley Sienkiewicz:									
Morocco	Dirham	1,620.56	425.00						425.00
Egypt	Pound	210	300.00						300.00
United States	Dollar				1,418.00				1,418.00
John B. Ritch III:									
France	Franc	765	180.00					765	180.00
Switzerland	Franc	476	288.00					476	288.00
Italy	Lire	122,700	150.00					122,700	150.00
Austria	Shilling	3,851	288.00					3,851	288.00
United States	Dollar				1,249.00				1,249.00
Pauline H. Baker:									
Algeria	Dinar	200	46.40					200	46.40
Morocco	Dirham	979.46	253.09	77.40	20.00	38.70	10.00	1,095.56	283.09
United States	Dollar				1,588.80				1,588.80
Total			5,073.49		8,535.76		10.00		13,619.25

Sept. 30, 1979.

FRANK CHURCH,
Chairman, Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JOHNSTON:

S. 1854. A bill to amend the Internal Revenue Code of 1954 to provide an election for income from certain spacecraft to be treated as income from sources within the United States; to the Committee on Finance:

By Mr. RIBICOFF (for himself, Mr. BAYH, Mr. BRADLEY, Mr. BURDICK, Mr. DECONCINI, Mr. DURKIN, Mr. FORD, Mr. HUDDLESTON, Mr. INOUYE, Mr. LEAHY, Mr. MOYNIHAN, Mr. SASSER, Mr. STEWART, Mr. ZORINSKY, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. DURENBERGER, Mr. GOLDWATER, Mr. HATCH, Mr. HEINZ, Mr. HELMS, Mr. HUMPHREY, Mr. LUGAR, and Mr. WEICKER):

S.J. Res. 107. A joint resolution authorizing and requesting the President to issue proclamations designating the weeks of January 21 through January 27, 1979, and January 20 through January 26, 1980 as "Junior Achievement Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHNSTON:

S. 1854. A bill to amend the Internal Revenue Code of 1954 to provide an election for income from certain spacecraft to be treated as income from sources within the United States; to the Committee on Finance.

● Mr. JOHNSTON. Mr. President, I introduce and send to the desk a bill providing for an election to treat income from certain spacecraft as income from sources within the United States.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1854

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTION TO TREAT INCOME FROM CERTAIN SPACECRAFT AS INCOME FROM SOURCES WITHIN THE UNITED STATES.

Section 861(e) of the Internal Revenue Code of 1954 (relating to income from sources within the United States) is amended by substituting the phrase "aircraft, vessel or spacecraft" for the phrase "aircraft or vessel" wherever the latter phrase is used in section 861(e).

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall apply to all spacecraft first leased by a taxpayer after December 31, 1978.●

ADDITIONAL COSPONSORS

S. 715

At the request of Mr. BELLMON, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 715, a bill to allow State and local governments to collect their applicable excise taxes on alcoholic beverages and tobacco products sold or consumed on military or other military reservations.

S. 1096

At the request of Mr. STEVENS, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 1096, a bill to amend title 39, United States Code, to provide for an extension of the provisions of section 3626(a) relating to reduced rates.

S. 1179

At the request of Mr. BAYH, the Senator from Vermont (Mr. LEAHY), the Senator from Washington (Mr. MAGNUSON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Montana (Mr. MELCHER), the Senator from Alaska (Mr. STEVENS), the Senator from Nevada (Mr. LAXALT), and the Senators from Wyoming (Mr. WALLOP and Mr. SIMPSON) were added as cosponsors of S. 1179, a bill to incorporate the Gold Star Wives of America.

S. 1203

At the request of Mr. BAYH, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1203, a bill to amend title II of the Social Security Act regarding disability benefits.

S. 1214

At the request of Mr. BIDEN, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1214, the Auto Theft Prevention Act.

S. 1468

At the request of Mr. BAYH, the Senator from Montana (Mr. BAUCUS), the Senator from Mississippi (Mr. COCHRAN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Alabama (Mr. HEFLIN), and the Senator from Wyoming (Mr. SIMPSON) were added as cosponsors of S. 1468, a bill to amend the Clayton Act to provide for contribution in antitrust price-fixing cases.

S. 1579

At the request of Mr. BOREN, the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of S. 1579, the Family Welfare Demonstration Program Act.

S. 1609

At the request of Mr. WILLIAMS, the Senator from New Hampshire (Mr. DURKIN) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 1609, the Employee Protection and Community Stabilization Act of 1979.

S. 1656

At the request of Mr. KENNEDY, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1656, the National Fishery Development Act.

S. 1703

At the request of Mr. CHAFEE, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 1703, a bill to amend the Internal Revenue Code of 1954 to provide an exclusion for income abroad attributable to certain charitable services.

S. 1724

At the request of Mr. WILLIAMS, the Senator from Washington (Mr. JACKSON), the Senator from Montana (Mr. MELCHER), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Maine (Mr. COHEN) were added as cosponsors of S. 1724, the Home Energy Assistance Act.

S. 1792

At the request of Mr. MCGOVERN, the Senator from Indiana (Mr. BAYH), the Senator from Maine (Mr. COHEN), and the Senator from Idaho (Mr. CHURCH) were added as cosponsors of S. 1792, a bill to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Simon Wiesenthal.

S. 1845

At the request of Mr. EXON, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 1845, a bill to provide that no salary increases shall be given Members of Congress or the Federal judiciary until the Federal budget is balanced.

S. 1846

At the request of Mr. TALMADGE, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 1846, a bill to amend the Internal Revenue Code of 1954 to provide for a $250 exclusion from gross income of interest and dividends received by an individual.

SENATE RESOLUTION 235

At the request of Mr. BELLMON, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Resolution 235, a resolution relating to the vote on the SALT II Treaty.

AMENDMENT NO. 443

At the request of Mr. JAVITS, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of amendment No. 443 intended to be proposed to S. 1204, the Child Health Assurance Act.

AMENDMENT NO. 493

At the request of Mr. SCHWEIKER, his name was added as a cosponsor of amendment No. 493 intended to be proposed to S. 1110, a bill to provide for reduced postal rates for small newspapers and magazines.

SENATE RESOLUTION 249—ORIGINAL RESOLUTION REPORTED CONCERNING THE INVESTIGATION OF SENATOR HERMAN E. TALMADGE

Mr. STEVENSON, from the Select Committee on Ethics, reported the following original resolution:

S. RES. 249

Whereas from January 1, 1973, through June 30, 1978, fifteen vouchers were submitted to the Senate in the name of Senator HERMAN E. TALMADGE which claimed and recovered Senate reimbursements in the aggregate amount of $43,435.83 for official expenses which were not incurred ($37,125.90 having been repaid by Senator TALMADGE on August 18, 1978, for overreimbursements between 1972 and 1978 inclusive); and

Whereas Senator TALMADGE failed to sign, as required by law, and properly supervise the preparation of all the aforesaid vouchers; and

Whereas the financial disclosure reports required to be filed by Senator TALMADGE under Senate rules for each of the years 1972 through 1977 were inaccurate; and

Whereas Senator TALMADGE failed to file in a timely fashion the candidate's receipts and expenditures reports for 1973, as required by Federal law, and inaccurate reports were filed for the period January 1, 1974, through December 31, 1974; and

Whereas campaign funds of Senator TALMADGE in excess of $10,000 were not reported, as required by law, and were deposited by his campaign chairman between July 3, 1973, and November 29, 1974, in an account maintained at the Riggs National Bank of Washington, D.C., in the name of Herman E. Talmadge/Talmadge Campaign Committee and were disbursed by said campaign chairman for noncampaign purposes.

Resolved, it is the judgment of the Senate that Senator TALMADGE either knew, or should have known, of these improper acts and omissions, and, therefore, by the gross neglect of his duty to faithfully and carefully administer the affairs of his office, he is responsible for these acts and omissions.

SEC. 2. It is the judgment of the Senate that the conduct of Senator TALMADGE, as aforesaid, is reprehensible and tends to bring the Senate into dishonor and disrepute and is hereby denounced.

SEC. 3. That Senator HERMAN E. TALMADGE be required to reimburse to the United States Senate the sum of $12,894.57 plus interest on overreimbursements in the aggregate amount of $43,435.83 at such rate and for such periods as are determined by the Secretary of the Treasury, in accordance with established procedures for collecting overreimbursements.

Mr. STEVENSON. Mr. President, as chairman of the Select Committee on Ethics, I am submitting herewith a resolution, and a report accompanying that resolution, in connection with the committee's investigation of Senator HERMAN E. TALMADGE. The Select Committee on Ethics, by unanimous vote, agreed to report this resolution for consideration by the full Senate, on September 14, 1979, in accordance with the provisions of Senate Resolution 338, as amended, and the committee's rules of procedure.

SENATE RESOLUTION 250—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. HART, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 250

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 595, a bill to authorize the appropriation of funds for the acquisition of stockpile materials and to authorize the disposal of three excess stockpile materials.

Such a waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

It was impossible for the Committee on Armed Services to properly review and give adequate consideration to H.R. 595 before the May 15, 1978, deadline due to the press of other priority legislation, namely, S. 428 the annual military procurement authorization bill, and S. 1319 the military construction authorization bill. Further the Committee on Armed Services considered and on June 6, 1979, reported H.R. 2154 which constitutes a complete revision to the Stock Piling Act requiring for the first time authorization for appropriations for stockpile acquisitions; this revision (H.R. 2154), which represents a major initiative by the Legislative Branch, logically required consideration and action before implementing legislation (H.R. 595) on specific commodities could be acted on.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to H.R. 595 as reported by the Committee on Armed Services.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF ENERGY CIVILIAN PROGRAMS AUTHORIZATIONS—S. 688

AMENDMENT NO. 501

(Ordered to be printed and to lie on the table.)

Mr. STAFFORD (for himself and Mr. LEAHY) submitted an amendment in-

tended to be proposed by them, jointly, to S. 688, a bill to authorize appropriations to the Department of Energy for civilian programs for fiscal year 1980 and fiscal year 1981, and for other purposes.

● Mr. STAFFORD. Mr. President, Senator LEAHY and I are submitting an amendment to S. 688, the Department of Energy authorization bill.

This amendment would eliminate the ceiling for incidental repairs with regard to weatherization of houses occupied by low-income individuals under the National Energy Conservation Policy Act (Public Law 95-619). While this amendment seeks to remove the limit on repairs it does not remove the overall limit on expenditure of $800 per dwelling unit under the act.

A cost effective weatherization program must include repairs as well as weatherization activities. The current $100 repair limit severely limits the ability of the local weatherization programs to accomplish the stated goals of the act.

Mr. President, the Department of Energy weatherization program was designed to help millions of elderly, handicapped, and low-income people to reduce their energy consumption. Unfortunately, the limitation of $100 per home for repair places an unrealistic demand on the program.

In the communities where the programs are conducted the housing suffers from general lack of repair in addition to weatherization needs. Roofing needs are common and usually cost more than the $100 allowance. Doors and windows are often beyond repair and reframing is usually necessary in the same house that requires roof repair. This, plus costly repairs on the heating system, could require an expenditure several times the limitation of current law.

The Vermont Community Action Agency Directors Association surveyed its weatherization program records of completed and pending jobs this spring. It found that of the total of 1,228 homes weatherized, more than 71 percent needed more than $100 in repair material to accomplish the weatherization of those homes.

Thus, Mr. President, in order to meet the national objectives of energy conservation as they relate to the housing of low-income people, a flexible and comprehensive approach is needed. This means that local weatherization programs need the latitude to do what is necessary to get the maximum benefit for the people living in these homes and to achieve national goals for energy conservation. Authority is also needed to make these repairs while at the worksite to avoid unnecessary delays and omissions, and to avoid unnecessary administrative overhead. The $100 limitation of the law makes the program self-defeating.

Mr. President, the amendment we are introducing will provide the flexibility the weatherization programs need to be more effective than they are now.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 501

On page 83, insert the following between lines 2 and 3:

AMENDMENT TO THE ENERGY CONSERVATION IN EXISTING BUILDINGS ACT OF 1976

SEC. 603. Section 415(c)(1)(D) of the Energy Conservation in Existing Buildings Act of 1976 is amended by striking "(not to exceed $100)".●

PRIORITY ENERGY PROJECT ACT—S. 1308

AMENDMENT NO. 502

(Ordered to be printed and to lie on the table.)

Mr. CHAFEE (for himself and Mr. HART) submitted an amendment intended to be proposed by them, jointly, to S. 1308, a bill to set forth a national program for the full development of energy supply, and for other purposes.

AMENDMENTS NOS. 503 AND 504

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted two amendments intended to be proposed by him to S. 1308, supra.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. FORD. Mr. President, on Thursday, October 18, at 10 a.m., and on Friday, October 19, at 9:30 a.m., the Committee on Energy and Natural Resources will convene hearings in room 3110 of the Dirksen Senate Office Building on energy impact assistance legislation. The measures to be considered are S. 1699, the Energy Impact Assistance Act of 1979, and amendment No. 395 to S. 1308, the Inland Energy Impact Assistance Act of 1979. The invited witnesses are:

OCTOBER 18

Hon. Charles W. Duncan, Jr., Secretary of Energy, Department of Energy, Washington, D.C.

Hon. Alex P. Mercure, Assistant Secretary for Rural Development, Department of Agriculture, Washington, D.C.

Hon. Elmer B. Staats, Comptroller General of the United States, General Accounting Office, Washington, D.C.

OCTOBER 19

National Governors' Association.

National Association of Regional Councils.

As background for these hearings, Chairman HENRY M. JACKSON has arranged for publication of a committee print entitled "Energy Impact Assistance: A Background Report," prepared by Wendell Fletcher of the Environmental and Natural Resources Policy Division of the Congressional Research Service. Single copies may be obtained next week by writing the Committee on Energy and Natural Resources, room 3106 Dirksen Senate Office Building, Washington, D.C. 20510.

Inquiries should be directed to Richard D. Grundy, Committee on Energy and Natural Resources, room 3106 Dirksen Senate Office Building, Washington, D.C.●

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

● Mr. LEAHY. Mr. President, I rise to announce that as a continuing effort to make Federal programs work the best they possibly can in rural America, the Rural Development Subcommittee which I chair, of the Committee on Agriculture, Nutrition, and Forestry, will hold an oversight hearing on rural people moving transportation.

It is my opinion that the oversight responsibilities of Congress have not been given the high priority they must have and that these responsibilities are often overlooked for the more glamorous congressional duties. However, I believe there is no reason to create a program if Congress is not going to live up to its responsibilities to see to it that it is running smoothly. This is why my Rural Development Subcommittee will continue to hold oversight hearings on programs affecting the quality of life in rural America.

The hearing will review the implementation of the section 18 bus program for rural and smaller urban areas, the effects of air deregulation on rural airports, and the Department of Agriculture's Rural Transportation Task Force.

The hearing will convene at 8 a.m. on October 24 and will conclude at noon. Testimony will be taken from public and administration witnesses. Anyone desiring further information on the hearing should contact Ken Pierce of my staff at 224-4242.●

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

● Mr. MATHIAS. Mr. President, the Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia has scheduled hearings on the water supply network of the Washington metropolitan region on Wednesday, October 10, 1979, in room 357 of the Russell Building from 9 a.m. until 12 noon.

Anyone wishing to submit testimony should contact Eileen Mayer of the subcommittee staff in room 6222, Dirksen Senate Office Building, Washington, D.C. 20510.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CANNON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold a hearing on S. 1656, the National Fishery Development Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EDUCATION, ARTS AND THE HUMANITIES

Mr. CANNON. Mr. President, I ask unanimous consent that the Subcommittee on Education, Arts and the Hu-

manities of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate today to consider extension of the Higher Education Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POPE JOHN PAUL'S NOBLE VISION OF PEACE AND JUSTICE

● Mr. McGOVERN. Mr. President, perhaps more than any other individual in the world today, Pope John Paul II has come to embody mankind's hopes for the dignity of each human person, for peace among nations, and for justice among peoples. His travels have filled whole nations with joy. This simple man of peace has shown that morality is a real force in international life and that spiritual values can inspire a reverence which weapons are powerless to create. Yesterday at the United Nations, Pope John Paul II made an eloquent call for greater progress toward peace and disarmament and for greater respect for the human rights of all people.

Mr. President, as we observe the Pope's visit to America with fascination and humility, the most fitting response we can make as a nation is to examine our own attitudes and convictions, our intentions and aspirations—as he calls on us to do—to enable us to help translate his clear and stunning vision into concrete acts and policies.

We must leave our children a greater inheritance than the arms race. By following the Pope's plea, I believe we can.

Mr. President, since the text of Pope John Paul's speech deserves widespread study, I am submitting it for printing in the RECORD for the benefit of my colleagues and the Nation.

The text of the speech follows:

TRANSCRIPT OF POPE JOHN PAUL II'S UNITED NATIONS ADDRESS

Mr. President, my address today will be published in its entirety just as I wrote it. Because of its length, however, I shall now read it in a shortened form.

I desire to express my gratitude to the General Assembly of the United Nations, which I am permitted today to participate in and to address.

My thanks go in the first place to the Secretary General of the United Nations organization, Dr. Kurt Waldheim. Last autumn, soon after my election to the chair of St. Peter, he invited me to make this visit, and he renewed his invitation in the course of our meeting in Rome last May.

From the first moment, I felt greatly honored and deeply obliged. And today, before this distinguished assembly, I also thank you, Mr. President, who has so kindly welcomed me and invited me to speak.

SPECIAL BOND OF COOPERATION

The formal reason for my intervention today is, without any question, the special bond of cooperation that links the Apostolic See with the United Nations organizations, as is shown by the presence of the Holy See permanent observer to this organization.

Besides attaching great importance to its collaboration with the United Nations Organization, the Apostolic See has always since the foundation of your organization expressed its esteem and its agreement with the historic significance of this supreme forum for the international life of humanity today.

It also never ceases to support your organization's functions and initiatives which are aimed at peaceful coexistence and collaboration between nations.

This confidence and conviction on the part of the Apostolic See is the result, as I have said, not of merely political reasons but of the religious and moral character of the mission of the Roman Catholic Church.

OFFERS SPECIAL CONGRATULATIONS

This is the real reason, the essential reason, for my presence among you. And I wish to thank you, to thank this distinguished assembly, for giving consideration to this reason, which can make my presence among you in some way useful.

Here, before the representatives of the states, I wish not only to thank you but also to offer you my special congratulations, since the invitation to the Pope to speak in your assembly shows that the United Nations Organization accepts and respects the religious and moral dimension of those human problems that the church attends, in view of the message of truth and love that it is her duty to bring to the world.

The questions that concern your functions and receive your attention, as indicated by the vast organic complex of institutions and activities that are part of or collaborate with the United Nations, especially in the fields of culture, health, food, labor and the peaceful uses of nuclear energy, certainly make it essential for us to meet in the name of men in his holiness, in all the fullness and manifold riches of his spiritual and material existence, as I have stated in my encyclical *Redemptor Hominis*, the first of my pontificate.

GREETINGS WITHOUT EXCEPTION

Now, availing myself of the solemn occasion of my meeting with the representatives of the nations of the earth, I wish above all to send my greetings to all the men and women living on this planet, to every man and every woman without any exception whatever. Every human being living on earth is a member of a civil society, of a nation, many of them represented here.

Each one of you distinguished ladies and gentlemen represents a particular state, system and political structure, but what you represent above all are individual human beings. You are all representatives of men and women of practically all the people of the world—individual men and women; communities and peoples who are living the present phase of their own history, and who are also part of the history of humanity as a whole. Each of them a subject endowed with dignity as a human person, with his or her own culture, experiences and aspirations, tensions and sufferings, and legitimate expectations.

This relationship is what provides the reason for all political activities, whether national or international, for in the final analysis, this activity comes from man, is exercised by man and is for man.

I would like to expres the wish that in view of its universal character, the United Nations organization will never cease to be the forum, the high tribune from which all man's problems are appraised in truth and justice.

THE FUNDAMENTAL DOCUMENT

It was in the name of this inspiration, it was through this historic stimulus, that on the 26th of June, 1945, towards the end of the terrible Second World War, the Charter of the United Nations was signed. And on the following 24th of October, your organization began its life. Soon after, on the 10th of December, 1948, came its fundamental document, the Universal Declaration of Human Rights: the rights of the human being as a concrete individual and of the human being in his universal value.

This document is a milestone on the long and difficult path of the human race.

The progress of humanity must be measured not only by the progress of science and technology, which shows man's uniqueness with regard to nature, but also and chiefly by the primacy given to the spiritual values and the progress of moral life.

Today, 40 years after the outbreak of the Second World War, I wish to recall the whole of the experiences by individuals and nations that were sustained by a generation that is largely still alive. I had occasion not long ago to reflect again on some of these experiences in one of the places that are most distressing and overflowing with contempt for man and his fundamental rights, the extermination camp of Auschwitz, which I visited during my pilgrimage to Poland in June.

This infamous place is unfortunately only one of the many scattered over the continent of Europe. But the memory of even one should be a warning sign on the part of humanity today in order that every kind of concentration camp anywhere on earth may once and for all be done away with. And everything that recalls those horrible experiences should also disappear forever from the lives of nations and states, everything that is a continuation of those experiences under different forms, namely the various kinds of torture and oppression, either physical or moral, carried out under any system, in any land.

This phenomenon is all the more distressing if it occurs under the pretext of internal security or the need to preserve an apparent peace.

You will forgive me, ladies and gentlemen, for evoking this memory, but I would be untrue to the history of this century. I would be dishonest with regard to the great cause of man which we all wish to serve, if I should keep silent—I who come from the country on whose living body Auschwitz was at one time constructed. But my purpose in evoking this memory is above all to show what painful experiences and sufferings by millions of people gave rise to the Universal Declaration of Human Rights, which has been placed as the basic inspiration and cornerstone of the United Nations Organization.

PRICE NOT PAID IN VAIN

This declaration was paid for by millions of our brothers and sisters, at the cost of their suffering and sacrifice brought about by the brutalization that darkened and made insensitive the human consciences of the oppressors and of those who carried out a real genocide. This price cannot have been paid in vain.

If the truth and principles contained in this document were to be forgotten or ignored and were thus to lose the genuine self-evidence that so distinguished them at the time they were brought painfully to birth, then the noble purpose of United Nations organization would be faced with the threat of a new destruction.

This is what would happen if the simple yet powerful eloquence of the Universal Declaration of Rights were decisively subjugated by what is wrongly called political interest, but often really means no more than one-sided gain and advantage to the detriment of others, or a test for power regardless of the needs of others, everything which by its nature is opposed to the spirit of the declaration.

Political interest understood in this sense—if you will pardon me, ladies and gentlemen—dishonors the noble and difficult mission of yourselves, for the good of your countries and of all humanity.

QUOTES POPE PAUL VI

Fourteen years ago, my great predecessor, Pope Paul VI, spoke from this podium. He

spoke memorable words which I desire to repeat today:

"No more war. War never again. Never one against the other, or even one above the other, but always in every occasion, with each other."

Paul VI was a tireless servant of the cause of peace. I wish to follow him with all my strength, and continue his service. The Catholic Church in every place on earth proclaims a message of peace, prays for peace, educates for peace.

This purpose is also shared by the representatives and followers of other churches and communities and of other religions of the world. And they have pledged themselves to it.

TROUBLED BY ARMED CONFLICTS

In union with efforts by all people of good will, this work is certainly bearing fruit. Nevertheless, we are continually troubled by the armed conflicts that break out from time to time. How grateful we are to the Lord when a direct intervention succeeds in avoiding such a conflict, as in the case of the tension that last year threatened Argentina and Chile.

It is my fervent hope that a solution, also, to the Middle East crisis may draw nearer. While being prepared to recognize the value of any concrete step or attempt made to settle the conflict, I want to recall that it would have no value if it did not truly represent the first stone of a general, overall peace in the area, a peace that being necessarily based on equitable recognition of the rights of all, cannot fail to include a consideration and just settlement of the Palestinian question.

Connected with this question is that of the tranquility, independence and territorial integrity of Lebanon within the formula that has made it an example of peaceful and mutually fruitful coexistence between distinct communities. A formula that I hope will, in the common interest, be maintained with the adjustments required by the developments of the situation.

I also hope for a special satute that, under international guarantees as my predecessor Paul VI indicated, would respect the particular nature of Jerusalem, a heritage sacred to the veneration of millions of believers of the three great monotheistic religions—Judaism, Christianity and Islam.

APPLAUDS EFFORTS TO LIMIT ARMS

We are troubled also by reports of the development of weaponry exceeding in quality and size the means of war and destruction ever known before. In this field, also, we applaud the decisions and agreements aimed at reducing the arms race. Nevertheless, the life of humanity today is seriously endangered by the threat of destruction and by the risk and I think even from accepting certain tranquilizing reports. The continual preparation for war demonstrated by the production of ever more numerous powerful and sophisticated weapons in various countries shows that there is a desire to be ready for war and being ready means being able to start it. It also means taking the risk that sometime, somewhere, somehow someone can set in motion the terrible mechanism of general destruction.

It is therefore necessary to make a continuing and even more energetic effort to do away with the very possibility of provoking war and to make such catastrophes impossible by influencing the attitudes and convictions, the very intentions and aspirations of governments and peoples. This task is certainly served by initiatives aimed at international cooperation for the fostering of development. As Paul VI said at the end of his encyclical *Populorum Progressio*, if the new name for peace is development, who would not wish to labor for it with all his power? However, this task must also be served by constant reflection and activity aimed at discovering the very roots of hatred, destructiveness, and contempt—the roots of everything that produces the temptation to war—not so much in the hearts of nations as in the inner determination of the systems that decide the history of all our societies.

NEW VISION OF CAUSE OF PEACE

The universal declaration of human rights has struck a real blow against the many deep roots of war since the spirit of war in its basic primordial meaning springs up and grows up, grows to maturity where the inalienable rights of men are violated. This is a new and deeply relevant vision of the cause of peace. One that goes deeper and is more radical. It is a vision that sees a genesis and in essence the substance of war. In the more complex forms emanating from injustice viewed in all its various aspects this injustice first attacks human rights and thereby destroys the organic unity of the social order. And it then affects the whole system of international relations. By applying this criterion, we must diligently examine which principal tensions in connection with inalienable rights of man can weaken the construction of this peace which we all desire to ardently and which is the essential goal of the efforts of the United Nations organization.

Man lives at the same time both in the world of material values and in that of spiritual values. For the individual living and hoping man, his needs, freedoms and relationships with others never concerns only one sphere of values alone but belong to both. Material and spiritual realities may be viewed separately in order to understand better that in the concrete human being they are inseparable. And to see that any threat to human rights, whether in the field of material realities or in that of spiritual realities, is equally dangerous for peace since in every instance it concerns man in his entirety.

CONSTANT RULE OF HUMANITY

Permit me, distinguished ladies and gentlemen, to recall a constant rule of the history of humanity, a rule that is implicitly contained in all that I have already stated with regard to integral development of human rights. The rule is based on the relationship between spiritual values and material or economic values. In this relationship, it is the spiritual values that are preeminent both on account of the nature of these values and also for reasons concerning the good of man. It is easy to see that material goods do not have unlimited capacity for satisfying the needs of man. They are not in themselves easily distributed and in the relationship between those who possess and enjoy them and those who are without them, they give rise to tension, dissension and division that will often even turn into open conflict. Spiritual goods, on the other hand, are open to unlimited enjoyment by many at the same time without diminution of the goods themselves. A critical analysis of our modern civilization shows that in the last hundred years it has contributed as never before to the development of material goods; but that it has also given rise—both in theory and, still more, in practice—to a series of attitudes in which sensitivity to the spiritual dimension of human existence is diminished by greater or less extent.

As a result of certain premises which reduce the meaning of human life chiefly to the many different material and economic factors—I mean the demands of production, the market, consumption, the accumulation of riches—or of the growing bureaucracy with which an attempt is made to regulate these very processes: Is this not the result of having subordinated man to one single conception and sphere of values?

OVERCOMING STATE OF NEED

What is the link between these reflections and the cause of peace and war? Since, as I have already stated, material goods by their very nature provoke conditionings and divisions, the struggle to obtain these goods becomes inevitable in the history of humanity. If we cultivate this one-sided subordination of man to material goods alone, we shall be incapable of overcoming this state of need. We shall be able to attenuate it and avoid it in particular cases but we shall not succeed in eliminating it systematically and radically unless we emphasize more, and pay greater honor before everyone's eyes in the sight of every society, to the second dimension of the good of man—the dimension that does not divide people but puts them into communication with each other, associates them and unites them.

I consider that the famous opening words of the Charter of the United Nations—in which the peoples of the United Nations determined to say succeeding generations from the scourge of war solemnly reaffirmed faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small—are meant to stress this dimension. An analysis of the history of mankind, especially at its present stage, shows how important is the duty of revealing more fully the range of the goods that are linked with the spiritual dimension of human existence. It shows how important this task is for building peace and how serious is any threat to human rights. Any violation of them even in a peace situation is a form of warfare against humanity.

TWO THREATS TO HUMAN RIGHTS

It seems that in the modern world there are two main threats. Both concern human rights in the field of international relations and human rights within the individual states of all societies. The first of these systematic threats against human rights is linked in an overall sense with the distribution of material goods. This distribution is frequently unjust, both within individual societies and on the planet as a whole. Everyone knows that these goods are given to men not only as nature's bounty. They are enjoyed by him chiefly as the fruit of his many activities ranging from the simplest manual and physical labor to the most complicated forms of industrial production and to the highly qualified and specialized research and study. Various forms of inequality in the possession of material goods and in the enjoyment of them can often be explained by different historical and cultural causes and circumstances. But while these circumstances can diminish the moral responsibility of people today, they do not prevent the situations of inequality from being marked by injustice and social injury. People must become aware that economic tensions within countries and in the relationships between states and even between entire continents contain within themselves substantial elements that restrict or violate human rights.

Such elements are the exploitation of labor and many other abuses that affect the dignity of human persons. It follows that the fundamental criterion for comparing social, economic and political systems is not and cannot be the criterion of hegemony and imperialism.

It can be—and indeed it must be—the humanistic criterion, namely the measure in which each system is really capable of reducing, restraining and eliminating, as far as possible, the various forms of exploitation of man, and of insuring for him through work not only the just distribution of the indispensable material goods, but also a participation, in keeping with his dignity, in the whole process of producton and in the social life that grows up around that process.

Disturbing factors are frequently present in the form of the frightful disparities between excessively rich individuals and groups on the one hand and, on the other hand, the

majority made up of the poor or, indeed, of the destitute, who lack food and opportunities for work and education, and are in great numbers condemned to hunger and disease.

And concern is also caused at time by the radical separation of work from property, by immense indifference to the production enterprise to which he is linked only by work obligation without feeling that he's working for a good that will be his or for himself.

It is no secret that the abyss separating the minority of the excessively rich from the multitude of the destitute is a very grave symptom in the life of any society. This also must be said—with even greater insistence—with regard to the abyss separating countries and regions of the earth.

COORDINATED COOPERATION NEEDED

Surely the only way to overcome this serious disparity between areas of satiety and areas of hunger and oppression is through coordination cooperation by all countries. This requires, above all, a unity inspired by an authentic perspective of peace.

Everything will depend on whether these differences and contrasts in the sphere of the possession of goods will be systematically reduced through truly effective means; on whether the belts of hunger, malnutrition, destitution, underdevelopment, disease and illiteracy will disappear from the economic map of the earth, and on whether peaceful cooperation will avoid imposing conditions of exploitation and economic or political dependence, which would only be a form of new colonialism.

I would now like to draw attention to a second systematic threat to man in his inalienable rights in the modern world, a threat which constitutes no less a danger than the first to the cause of peace. I refer to the various forms of injustice in the field of the spirit.

Man can indeed be wounded in his inner relationship with truth, in his conscience, in his most personal belief, in his view of the world, in his religious faith, and in the sphere of what are known as civil liberties. Decisive for these, these last, is equality of rights without discrimination on grounds of origin, race, sex, nationality, religion, political convictions and the like.

For centuries, the thrust of civilization has been in one direction—that of giving the life of individual political societies a form in which there can be fully safeguarded the objective rights of the spirit of human conscience and of human creativity, including man's relationship with God.

Yet, in spite of this, we still see in this field recurring threats and violations, often with no possibility of appealing to a higher authority or of obtaining an effective remedy.

Besides the acceptance of legal formulas safeguarding the principles of the freedom of the human spirit, such as the freedom of thought and expression, religious freedom and freedom of conscience, structures of social life often exist in which the practical exercise of these freedoms condemns man in fact, if not formally, to become a second-class or third-class citizen.

It is a question of the highest importance that in internal social life as well as in international life, all human beings in every nation and country should be able to enjoy effectively their full rights under any political regime or system. Only the safeguarding of this real completeness of rights for every human being, without discrimination, can insure peace at its very roots.

REPEATS VATICAN PRINCIPALS

With regard to religious freedom which I, as Pope, am bound to have particularly at heart, precisely with a view to safeguarding peace, I would like to repeat here, as a contribution to respect for man's spiritual dimension, some principles contained in the Second Vatican Council declaration "Dignitatis Humanae."

In accordance with their dignity, all human beings because they are persons—that is beings endowed with reason and free will and therefore bearing personal responsibility—are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth once they come to know, and to direct their whole lives in accordance with its demands.

The practice of religion, of its very nature, consists primarily of those voluntary and free internal acts by which a human being directly sets his course towards God. No merely human power can either command or prohibit acts of this kind. But man's social nature itself requires that he give external expression to his internal acts of religion, that the communicate with others in religious matters, and that he profess his religion in community.

These words touch the very substance of the question. They also show how even the confrontation between the religious view of the world and the agnostic or even athiestic view—which is one of the signs of the times of the present age—could preserve honest and respectful human dimensions without violating the essential rights of conscience of any man or woman living on earth.

Respect for the dignity of the human person would seem to demand that when the exact tenor of the exercise of religious freedom is being discussed or determined with a view to national laws or international conventions, the institutions that are by their nature at the service of religion should also be brought in. If this participation is omitted, there is a danger of imposing in so intimate a field of man's life rules or restrictions that are opposed to his true religious needs.

The United Nations organization has proclaimed 1979 the Year of the Child. In this perspective we must ask ourselves whether there will continue to accumulate over the heads of this new generation of children the threat of common extermination, for which the means are in the hands of the modern states, especially the major world powers. Are the children to receive the arms race from us as a necessary inheritance? How are we to explain this unbridled race?

The ancients said *Si vis pacem, para bellum.* But can our age still really believe that the breathtaking spiral of armaments is at the service of world peace. In alleging this threat of a potential enemy, is it really not rather the intention to keep for oneself a means of threat in order to get the upper hand with the aid of one's own arsenal of destruction? Here, too, it is the human dimension of peace that tends to vanish in favor of ever new possible forms of imperialism.

It must be our solemn wish here for our children, for the children of all the nations on earth that this point will never be reached.

And for that reason I do not cease to pray to God each day so that in His mercy he may save us from so terrible a day.

At the close of this address I wish to express once more before all the high representatives of the said states who are present a word of esteem and deep love for all the peoples, all the nations of the earth, for all human communities.

Each one has its own history and culture. I hope that they will live and grow in the freedom and truth of their own history. For that is the measure of the common goals of each one of them.

HOPE FOR RESPECT FOR AUTHORITIES

I hope that each person will live and grow strong with the moral force of the community that forms its members' assistance. I hope that the state authorities, while respecting the just rights of each citizen, will enjoy the confidence of all for the common good.

I hope that all the nations, even the smallest, even those that do not yet enjoy full sovereignty, and those that have been forcibly robbed of it, will meet in full equality with the others in the United Nations Organization.

I hope that the United Nations will ever remain the supreme forum of peace and justice, the authentic seat of freedom of peoples and individuals in their longing for a better future.●

NATO AND DEFENSE

● Mr. HUMPHREY. Mr. President, Mr. Robert Battersby, a British member of the European Parliament who recently visited this country, has written a short critique of NATO's defense posture as well as a summary of the SALT II treaty. Mr. Battersby's paper discusses these issues from a European perspective and, therefore, provides a valuable insight to some of the defense concerns of our NATO allies.

For this reason, Mr. President, I ask that Mr. Battersby's article be printed in the RECORD.

The article follows:

NATO AND DEFENCE

There are three areas in which NATO must provide a credible response to any aggressive move by the U.S.S.R.—strategic nuclear weapons, tactical nuclear weapons, and conventional warfare. NATO must be able to counter a threat from the air, from land in continental Europe or at sea against its supply lines, particularly in the Atlantic and Indian oceans.

STRATEGIC NUCLEAR WEAPONS

In the nuclear field the U.S.A. has lost its superiority over the U.S.S.R. SALT I codified a broad parity between the two superpowers, the Soviet having a superiority in numbers and the Americans in more technically advanced systems. Since this agreement was signed, the U.S.S.R. has introduced three new intercontinental rocket systems and is experimenting with other systems. The U.S.A. has the new MX missile on the drawing board. The same situation exists at sea. The latest Soviet submarines carry missiles with a range of approximately 5,000 miles which can hit the industrial heart of America from Russian waters. The first new American Trident submarine "Ohio" will not be at sea until 1981. There are 24 of U.S.S.R. "Delta" class missile submarines at sea today.

TACTICAL NUCLEAR WEAPONS

From the European point of view the tactical or battlefield nuclear weapon situation is even more disquieting. SALT II does not include the new Soviet SS20 rocket system in its SNDV ceilings. This weapon has a range of over 3,000 nautical miles and is targeted on Europe. This weapon can be fired from Russian territory, and is fully mobile. The best counter of the SS20 is probably the cruise missile now being developed in the U.S.A. The range of these missiles is, however, restricted by SALT II and there are doubts as to whether the Americans can transfer this technology to their European allies should the agreement be signed and passed by the Senate.

CONVENTIONAL WARFARE

The line of direct land contact between the Warsaw Pact forces and those of NATO is in Europe. This front is divided by NATO into Northern, Central and Southern commands. The Central front covers the traditional lines of invasion.

Here the picture has changed drastically in the past few years. The Warsaw Pact forces used to occupy a defensive posture. They are now organised for offence. The number of tanks now outnumber those of NATO by nearly 3 to 1. Each Soviet division has a regiment of new BMP60's, a powerful armoured personnel carrier designed to spearhead an invasion force. Divisional rocket launchers, have been increased from 192 to 720. They are all mobile as is the entire artillery park. Over 80 percent of Soviet anti-tank weapons are in armoured vehicles, compared to the 43 percent in NATO forces. The latest bridging equipment could cross the Rhine in 30 minutes. The fighter-bomber force has increased by 200 percent in the last two years, as has the troop-carrying helicopter force.

Most Soviet military exercises are based on a number of simultaneous thrusts, successful breakthroughs being rapidly re-inforced and exploited. All exercises include chemical and bacteriological warfare, and the Soviet command operates on the assumption that any major war would rapidly escalate to a tactical or even strategic nuclear exchange.

This change of posture, together with the world-wide expansion of the Soviet Navy has at last caused NATO to react. In 1977 two separate NATO programmes were agreed. These were:

1. a short term programme designed to increase the number of anti-armour weapons, to accelerate the speed of allied re-inforcements from the U.S.A., Canada and Britain, and to increase the stocks of fuel and ammunition which had been allowed to run dangerously low, and

2. A long-term programme, which was accepted in 1978. This set up ten working parties to examine a number of NATO requirements up to the mid-1990's; such as communications electronic warfare standardisation, etc. One of the results was that NATO governments agreed to spend 3 percent more in real terms on defence in the next few years. This may not be enough!

DEFENCE EXPENDITURE

The Warsaw Pact is now spending 11–13 percent of their GNP on "defence" compared to 5 percent in the U.S.A. and 4.7 percent in Britain. Soviet spending has been increasing at 3–4 percent annually for a number of years with all the benefits of long-term arms development programmes.

THE BATTLE FOR RESOURCES

(a) Sea communications: From the European point of view the tactical critical area is the Northern flank, and the early warning and defence capability in the Norway–Iceland–Greenland gap.

However, strategically the Supreme Allied Commander Atlantica has recently written "our most serious deficiencies in the realm of resupply stem from the problem of the control of the seas OUTSIDE the NATO area that is, South of the Tropic of Cancer and into the Pacific and Indian oceans". This view has also been echoed by the man responsible for the continental defense of Europe, General Haig, the Supreme Allied Commander, Europe, who has said that we "neglect Soviet activity in the third world at our peril".

The Soviet Northern Fleet contains their most modern vessels, the new aircraft carrier "Kiev" the world's heaviest arms cruisers of the "Kara" class and the destroyers of the "Krivak" class. In all, some sixty major surface combatants plus 440 lesser vessels, amphibious warfare ships and auxiliaries. Murmansk also acts as a base port for over 170 submarines, of which some 90 plus are nuclear powered. The Murmansk Kola Peninsular complex is protected by 8 Soviet divisions, 16 airfields and a multiplicity of missile systems.

(b) Oil: Western Europe is vulnerable to strangulation of raw materials, especially of oil, in times of war. North Sea oil supplies would be vulnerable to direct attack. Essential supplies would have to come from the Persian Gulf area round the Cape of Good Hope by highly vulnerable tankers. The task of NATO sea power to give them protection should the war last longer than a few weeks. However, today the only NATO base in the Indian ocean is the island of Diego Garcia, and tankers can only be protected by a convoy system using South African Ports. Soviet military aircraft now operate from Aden in the Indian Ocean, where the U.S.S.R. also maintains a permanent squadron of some 20 to 25 ships. If this continues NATO may be forced to reinforce its strength in this area.

A direct Soviet attack on the Gulf would, in all probability, initiate World War III. The Soviets will therefore aim for the gradual erosion of Western influence in Arab lands and Turkey which carries less risk. The revolution in Iran and Soviet tactics in exploiting the situation may well indicate the shape of things to come.

(c) Other raw materials: It is also worth noting that the power which controls Southern Africa, controls 94 percent of the world's platinum production and 99 percent of its reserves, 67 percent of its chrome production and 84 percent of its reserves, 62 percent of its manganese and 93 percent of its reserves, 62 percent of its gold and 68 percent of its reserves, 70 percent of its vanadium and 97 percent of its reserves, with very similar figures for such important minerals as fluorspar asbestos titanium and probably in the case of South West Africa uranium.

SALT II

1. GENERAL

The Salt II Treaty is of great importance to the whole of the Western world. A summary of the present position and future plans is as follows:

The U.S.S.R.

The Soviet Union is now introducing its fourth generation of ICBMs, the SS17, 18 and 19 at a rate of approximately 125 a year. All these missiles carry either high yield single warheads or multiple independent re-entry vehicles (MIRVs).

The Soviet submarine force also continues to expand and now has a total of 27 Delta class submarines with the SSN8, a single warhead missile with a range of 7,800 Km. The new Delta III—now undergoing sea trials—is said to be fitted with a new SSNX18, a longer range liquid fuel missile carrying up to three MIRVs.

Construction of the older Yankee class submarines has stopped at 34 units and 544 launching tubes but it is believed that a new solid fuel missile, the SSNX17 with greater range and accuracy, will be backfitted to these vessels.

As far as the Soviet air force is concerned their heavy bomber capability still rests on the now aging "Bears" and "Bisons" though it is rumoured that a new heavy bomber is now in the design stage. There is no evidence that air launch cruise missiles have yet been developed.

Outside the scope of the SALT Treaty comes the "Backfire" bomber which, with a range of 2,700 Km and air re-fuelling, could reach the United States. There is also the important SS20, a mobile medium range missile with 3 MIRV's targeted on Europe.

The USA

The United States developments are considered in many quarters to be far less spectacular. The standard Minuteman III ICBM system is being improved in yield and accuracy by fitting a new re-entry vehicle and nuclear warhead. 300 of the 500 Minutemen IIIs will be so equipped by the early 1980s and this programme would not be affected by the SALT II Treaty.

The new American ICBM, and the MX, is under development but would not be deployed before 1983 and so would also not be directly affected by SALT II. This programme is designed to provide a mobile option and will have four times the throw weight and three times the number of reentry vehicles as the improved Minuteman III. It is suggested that it will be moved from silo to silo on a probability scale of 20 silos per missile so that a potential enemy would not know where to strike. This technique is referred to as the multiple aiming points system.

The US "Trident" submarines will displace 18,700 tons and will carry 24 SLBM's; the first USS "Ohio" should be commissioned by 1981. It is planned that they will be built every three years allowing fourteen to be deployed by 1989.

Two cruise missile programmes are under way, one by General Dynamics and one by Boeing. The ALCM–B, intended to be launched from heavy bombers (120 B52G's may be converted to carry these missiles between 1980 and 1986) and the Tomahawk which can be launched from aircraft, submarines, surface ships or ground launchers.

It will thus be seen that at present the Soviets are ahead in modern missiles though the US programme would more than catch up to them up by the mid-1980s.

Effect of SALT II

If the projected Treaty goes through the main effects will be:

(i) A basic agreement of five years' duration (i.e. until 1985) setting overall ceilings on strategic weapons as follows:

An initial level of 2,400 strategic systems to be reduced to 2,250 during the term of the Treaty,

A sub-ceiling of 1,320 for all launchers with MIRV including heavy bombers with long range cruise missiles,

A sub-ceiling of 1,200 or ballistic missiles with MIRV,

A sub-ceiling of 820 land based ICBM with MIRV and a limitation on the conversion of light to heavy launchers, and

A limit on the total number of MIRV's carried by a single missile to 10.

(ii) A protocol of three years' duration which would:

Ban the deployment of mobile ICBM launchers and the flight testing of ICBM's from such launchers,

Put limitations on the flight testing and deployment of air to surface ballistic missiles (ASBMS), and

Ban the deployment of sea and land launched cruise missiles with ranges of over 600 Km.

Arguments against ratification advanced by Senator Jackson and others include:

(a) The danger that the United States could lock itself in a position of strategic inferiority as regards the Soviet Union.

(b) The vulnerability of the US ICBM's to a Soviet counterforce strike owing to the increasing accuracy of Soviet missiles and the fear that the development of the US's new MX missile would be prejudiced.

(c) The Soviet "Backfire" bomber is excluded yet is capable of intercontinental missions.

(d) The limitation in the protocol on the range and development of cruise missiles may become permanent while the Soviet mobile SS20 is not included.

(e) Transfer of cruise missile technology to European allies is not safeguarded.

(f) There is therefore a danger that the Alliance may become locked into a position of inferiority in medium range and theatre nuclear missiles even though these are not covered by the Treaty.

(g) Verification of any agreement is essential and this problem still has to be solved.

Senator Javits and those who support the Administration's policy take a broader and less technical view. They argue that:

(a) The main aim is to prevent a nuclear arms race. This the Treaty achieves by providing equal limits on strategic nuclear weapon delivery systems and impeding technological development.

(b) The areas of uncertainty regarding the threat will be reduced.

(c) In fact the agreement will impose reductions on current Soviet activities and, as the USSR now has more launch-vehicles than the USA, some 300 would have to be withdrawn by 1985.

(d) A SALT II agreement would be of considerable political advantage in East-West relations and an essential precursor to SALT III which would include the British and French nuclear forces and US aircraft stationed in Europe as well as Soviet medium range systems targeted on Europe.

(e) The range limitation on cruise missiles is only for three years and these missiles could not be available and deployed before the end of this period.

European interest in SALT II appears to be divided on much the same lines as in the US Senate. On one hand Europeans want to prevent a renewed arms race while still retaining the protection of the US strategic nuclear deterrent. On the other hand they realize that the cruise missile could become a vital weapon as far as Europe is concerned. Europe is now facing an increasing threat from the SS20. The Protocol's limitation of range, which is initially only for three years, could become five years or even longer (depending on how long it takes to negotiate SALT III) and the transfer of technology is further endangered. This is of particular importance, as cruise missiles could prolong the life of the British and French strategic nuclear deterrent forces.

2. IMPLICATIONS

SALT II has immense implications: for President Carter's political future, for U.S./Soviet relations, and for the relationship between the United States and Western Europe. There is even a sense in which it gives the Soviet leadership a veto on President Carter's hopes of re-election. In any event, it marks the beginning of a new and more dangerous period in international affairs.

In terms of disarmament, the treaty will achieve next to nothing. The Soviet Union, as a result of it, will have to scrap a few dozen near obsolete heavy missiles; the United States an even smaller number of already mothballed strategic bombers.

Its purpose is arms limitation, not disarmament, but even in those terms, it represents a very limited gain, and the concerns of those who oppose it, are not completely unfounded. If the Senate should flatly refuse to ratify it, there can be no serious hope of any further progress on strategic arms limitation, either between the two superpowers, or in terms of non-proliferation by other governments such as Pakistan, Israel, South Africa, Argentina, etc. This is unlikely and ratification of a treaty of some kind is more probable. The majority in the Senate appears to be in such a mood of suspicion, both of the Soviet Union's intentions, and of the Carter Administration's strength, that it is likely that it will not ratify the text signed in Vienna without considerable amendments. Moreover, this process may not be completed before the 1980 presidential election campaign.

In this event, the following may happen:

1. The United States will increase its expenditure on strategic arms systems.

2. President Carter's position in domestic politics will be severely damaged.

3. The general credibility of the U.S. government in international relations may be hurt.

4. U.S. leadership in Western Europe may be seriously affected.

5. In Europe the discrediting of American leadership may force Helmut Schmidt to dissociate himself from Carter and help those, like Herbert Wehner, who have been arguing that Germans must look to their security in the future by neutralising both the Germanies; and those, like Franz-Josef Strauss, who will argue that, if the U.S.A. can no longer be relied on to defend Europe, then Europe must defend itself.

6. More generally, the credibility of the U.S. strategic "umbrella" must be called into question. This will revive discussion in Europe of more powerful "theatre" nuclear weapons. In view of the massive Soviet weaponry now targeted on Western Europe.

7. The SALT II situation will, inter alia, decide who is to become the next President. This puts the Russians in a strong bargaining position relative to the present administration.

The Soviet leadership presumably wants a treaty, if only because any treaty on approximately the lines of the one signed in Vienna does give some recognition to the rough equivalence of American and Soviet strategic power. However, the Soviets may prefer a period of further negotiation from a position of strength in view of the political gains to be made in influencing U.S.A. and European internal politics.●

THE NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

● Mr. BENTSEN. Mr. President, all of us are concerned about the state of our national economic health. Numerous economic indicators are flashing ominous signs of continuing inflation, slowing output, lackluster retail sales, and, most recently, rising levels of joblessness. As the current recession becomes more pervasive, unemployment in our individual States will become more visible and accurate guidance for relief will become crucial. The unemployment rate is our signal that something is going awry with the Nation's work force. Unemployment rates are integral to our decision process whether for the formulation of macroeconomic policy or for regional aid to our individual constituencies.

There have been allegations in the past that the unemployment rate no longer measures accurately the unemployed. In some cases, criticism included undercounting, for example, the discouraged worker; on other occasions, the problem stemmed from overcounting, for example the student who wants only part-time work.

The extent of our reliance on this indicator makes its accuracy doubly necessary. In order to determine the accuracy of these statistics, Congress created the National Commission on Employment and Unemployment Statistics to review and evaluate the Nation's labor force statistics. For 18 months the Commission has commissioned background papers from experts, held public hearings around the country and consulted with a wide variety of public and private sources. I am pleased to say that the Joint Economic Committee aided the Commission by publishing the three volumes of the public hearings. In addition, Mr. JAVITS, Mr. BOLLING, and myself served as advisory members to the Commission. The Commission recently has issued its final report containing a series of 88 recommendations. Those proposals, if enacted, have far-ringing implications for the data base of our current programs that use labor force statistics to allocate funds. I urge my colleagues to familiarize themselves with the proposals in the report. Mr. President, because a full discussion of even the most important recommendations would be too lengthy, I ask that a summary of the recommendations be printed in the RECORD.

The summary follows:

DISCUSSION OF RECOMMENDATIONS

STATE AND LOCAL DATA

To combat weaknesses in the present state and area statistics, the panel put forward specific proposals for surveying more households each month. By achieving better interstate standardization of labor force measurement, the proposals would assure greater equity in the distribution of federal money. The commission warned, however, that even with adoption of its recommendations, totally reliable data on job fluctuations in thousands of small areas would remain unavailable with the frequency and minute detail now required by Congress. Getting all the information presently prescribed by means of an expanded household survey would entail an annual cost of $2.3 billion, as against the $20 million currently spent, the commission said. It described such an outlay as "prohibitive." Instead the panel urged Congress to consider increased reliance on data that reflect longer-term characteristics, such as average family income, in allocation formulas for state and local grants. Such data could be obtained from the 1980 and subsequent censuses.

Congress has mandated the application of official unemployment rates as a base for allocating federal employment and area development funds to some 6,000 local districts. The commission set forth flatly its conviction that there is no way, at reasonable cost, to produce accurate job and jobless statistics for so many small areas every month. "The changes the commission recommends are therefore only incremental, as are the improvements they will yield," the report concluded.

The group recommended that the Current Population Survey be expanded by 40,000 households beyond the 70,000 level slated to be reached next month. This increase in the sample size would improve the reliability of annual average statistics for all of the 50 states, metropolitan areas with a population of 1 million or more, and 11 major cities. It would also improve the reliability for the balances of states in which these metropolitan areas and big cities are located. A separate expansion of about 10,000 would increase the number of minority households in the sample. The larger sample would improve the accuracy not only of the state and area statistics but also of data on various groups among the national population.

To improve monthly or quarterly estimates for states and major areas, the commission put forward recommendations for technical revisions intended to overcome defects in the 70-step handbook method. This complicated system bases rough estimates of total unemployment in an area on a variety of information—most importantly the number of workers who are receiving unemployment compensation. In addition, the commission proposed expansion of the survey of nonagricultural employers to provide monthly employment data for all Standard Metropolitan Statistical Areas and balances of states. Expansion of this survey would also yield more reliable data on particular industrial sectors of the economy. The commission also

favored a larger sample in the Agriculture Department's survey of farm employers.

For smaller areas, however, the commission urged Congress to recognize that no feasible modification of present data-gathering methods will remove the danger of gross inequities in fund allocation. As a safeguard against large errors in the monthly data, the panel advocated a review of allocation formulas to encourage more reliance on quarterly and annual data and on labor force information that might be derived from the quinquennial censuses, beginning next year. The commission suggested that Congress designate an appropriate congressional office to work with executive statistical agencies in developing the technical information needed for the design of improved allocation formulas (chapter 16).

LINKING EMPLOYMENT AND INCOME

The panel recommended that the Federal Bureau of Labor Statistics prepare an annual report on economic hardship associated with low wages, unemployment and part-time or sporadic participation in the labor force. This proposal, which may potentially turn out to be one of the most important commission recommendations, grew out of a recognition that the increased number of families with two or three wage-earners, plus the widespread availability of unemployment insurance, food stamps and other forms of income transfer, have reduced the correspondence of existing unemployment statistics with economic hardship. The report also noted that some full-time, year-round workers are poor because they receive low wages or have large families.

The panel was unanimous in urging that such data be prepared on a national basis. However, the problem of defining economic hardship and the analytical need to relate hardship to diverse types of labor market difficulties were cited by the commission as reasons for avoiding a single composite index. Instead, the commission advised the Bureau of Labor Statistics to present a variety of measures in the proposed annual report (chapter 5).

REVISING DEFINITIONS

The commission urged a comprehensive updating of definitions now used to differentiate between persons counted in the labor force and those excluded. Most of the suggested changes in labor force definitions pertained to data gathered in the Current Population Survey, the monthly household survey on which the national unemployment rate and many other key labor market indicators are based.

The panel proposed an end to the present exclusion of the armed services from the count of employed workers. The introduction of an all-volunteer military has removed the rationale for excluding members of the armed forces stationed in the United States from the estimate of national employment. "Workers are now free to choose between employment in the military and civilian sectors, and pay scales and job tenure conditions in the sectors have become more comparable," the report noted (page 49).

However, the commission qualified its recommendation by suggesting that the military be excluded from state and local job totals because military employment in an area might not represent job opportunities for the local labor force. "Local workers who enlist are likely to be assigned to posts outside their home community, and military jobs at a local installation are filled mostly by recruits from elsewhere," the report pointed out. "Hence, job opportunities for a local labor force are best represented by statistics that pertain only to civilian employment."

The commission advocated no change in the age floor of 16 years for tabulating the labor force, despite suggestions in some quarters that a higher age be used because of the large proportion of teenagers in school who are interested only in part-time work. "Age 16, as the legal minimum age for most employment under the Fair Labor Standards Act and the age at which compulsory school attendance ends in most states, remains a reasonable lower bound despite the trend toward longer school enrollment," the panel said. It also rejected the idea of setting an upper age boundary for inclusion in the labor force. A change at either end of the age spectrum, the commission said, might have the unfortunate effect of diverting attention from the special labor market problems of younger or older workers (page 89).

Another issue addressed by the commission was how to measure and whether to include in the official unemployment total so-called "discouraged workers"—jobless persons who indicate that they would like employment but are not currently looking for work because they believe none is available for them. The commission proposed changes in the present method of identifying discouraged workers to get a better reading of their willingness to work. The new method, which would produce monthly rather than the present quarterly estimates, would count persons not presently in the labor force who are currently available for work, express desire for work and have actively sought it in the last six months. The six-month search requirement would serve as a test of at least minimal attachment to the labor market.

The quarterly tabulation of discouraged workers now published by the Bureau of Labor Statistics estimates their number at roughly 800,000. Under the commission's proposed definition, this number would be reduced. Whatever the number of discouraged workers, the commission concluded that it was appropriate to continue the present practice of excluding such workers from the unemployed tally on the ground that they were not in the active labor market. "Undoubtedly," the commission stated, "some of those who indicate they have not sought work because of discouragement about job prospects conform to the popular conception of unemployment, but no method has yet proved successful in isolating this group (page 34)."

ADDITIONAL DATA

The commission recommended the collection of additional data to illuminate the dynamics of the flow of workers in and out of the active labor market and to make faster and more dependable the detection of turning points toward recession or recovery in the business cycle. In recent years, major labor force changes have been due not only to shifts between employment and unemployment, but also to large inflows of people from outside the labor force who have decided to seek jobs.

The panel, therefore, urged the Census Bureau to develop "gross flow" data, which would reveal the number of unemployed individuals in one month who remained unemployed, found work, or left the labor force in the next month. Similar information would be provided on changes in status among the employed and those not in the labor force.

The panel also stressed the need for additional information to better understand and identify structural labor market problems. The commission supported a doubling of the Current Population Survey's sample of minority households to "permit the publication of more reliable monthly data on blacks and Hispanic Americans, as well as more frequent figures than are now available on Asian and Native Americans (page 93)." Rural areas were also cited as requiring special attention in future redesigns of the survey (page 95). The commission recommended expansion of the occupational employment statistics program and research on the feasibility of determining the occupations in which the unemployed are seeking work (p. 106).

The commission found little virtue in proposals for a national program of job vacancy statistics. It acknowledged the conceptual attractiveness of job vacancy estimates, but expressed doubt that useful date on job vacancies could be collected in a cost-effective manner (p. 120).

WAGE DATA

The commission was also critical of the long-standing "real spendable earnings" series statistics derived from a monthly survey of nonagricultural employers. The series purports to measure the average weekly earnings adjusted for inflation and federal taxes that would be paid by a married man with a nonworking wife and two children, but the series actually uses the average earnings of all workers in the survey, regardless of their family status. The panel recommended that the Bureau of Labor Statistics develop spendable earnings statistics from the Current Population Survey (in which quarterly earnings information could be related to the true family situation of the worker) and, if these data prove sufficiently reliable, discontinue publication of the series based on the employer survey (p. 206).

CENSUS UNDERCOUNT

The commission urged that the Current Population Survey data be adjusted by the Bureau of the Census to offset the officially estimated census undercount for various demographic groups. The undercount in the 1970 census ranged from 1.4 percent for white women to 9.9 percent for black men.

Because the census population figures are used to inflate the Current Population Survey data into national estimates, the census undercount results in underestimates of the current labor force. These underestimates are more pronounced for demographic groups that experience large undercounts and for states with heavy representation of these groups. According to the commission, adjustment for the census undercount would yield more accurate current statistics and more equitable distribution of the funds dependent on the estimates (page 139).

SEASONAL ADJUSTMENT

The commission advanced suggestions for improving the system of seasonal adjustments now used to modify the national index of unemployment. The proposed changes, while highly technical in nature, are intended to make the adjusted statistics more accurate indicators of trends in the economy (chapter 14).

SPECIAL SAMPLE

The commission also favored a special sample of about 10,000 households as a supplement to the regular household survey (page 148). This sample, which would be implemented for a 2-year trial period, "would be used for collection of special labor force data, such as detailed information on job search activities, underemployment, or labor force attachment."

INDEPENDENCE OF DATA PRODUCERS

The commission commended the Bureau of Labor Statistics for conducting its work in a thoroughly nonpolitical and nonpartisan manner and warned that any move toward politicing its interpretation of job figures would seriously erode the public support BLS now enjoys. The panel recalled that the bureau had been under intermittent political pressure in the mid-years of the Nixon administration and was often caught in a crossfire between the news media and the administration over news management and political intrusion in the bureau's affairs. Emphasis by congressional committees, the press, academics and business and labor groups on the need for insulating the BLS against political interference helped preserve the integrity of the statistics through this

period though morale within the bureau was shaken, the commission said.

The commission coupled its call for continued independence from partisan influence with a caution to the bureau that this did not mean divorcing the array of figures it offers from responsiveness to the needs of policymakers and other users. To reduce the danger that the agency's statistics or methods might become obsolete, the panel counseled the BLS to foster a more active role for advisory councils representing major users of its figures. It also suggested that another comprehensive review of the whole labor statistics system be undertaken within ten years (p. 270).

DATA PRESENTATION

The commission considered what has come to be known as the "one-number syndrome"—the focusing of major attention on a single monthly indicator, the official seasonally adjusted unemployment rate. While recognizing that a careful analysis of fluctuation in employment conditions requires close scrutiny of numerous labor market yardsticks, the panel observed that the public, press and policymakers who do not specialize in labor market assessment can hardly be expected to conduct such a far-reaching review each month.

The commission applauded the introduction by the late Julius Shiskin, former head of BLS, of six alternatives to the official unemployment rate. Each one embodies different concepts of how to measure the nation's volume of joblessness. These alternate measures help meet the needs of persons who consider the official rate too inclusive or too restrictive in its criteria. The panel recommended that BLS continue to publish and give greater prominence to a flexible array of alternate measures in its dissemination of labor force information. The commission, however, did not recommend regular publication of unemployment rates adjusted for changes in the age or sex distribution of the labor force on the grounds that such adjustments would lead BLS into controversial interpretations of labor force data. The commission urged continued publication of a separate index showing the percentage of the noninstitutional working-age population that is employed. It said the employment-population ratio represents a useful supplement to the official unemployment rate, but not a substitute for it (page 273).

COMMENTS, RESERVATIONS OR DISSENTS

Although its membership was chosen to reflect diverse societal viewpoints including those of labor, business, academia, state and local government, minorities, women, and other data users, the commission agreed unanimously on scores of concrete suggestions for conceptual and technical changes. However, the report does not necessarily reflect the views of all members on all issues discussed in the report. Members of the commission recorded comments, reservations or dissents on five issues:

Four panel members believed that counting discouraged workers among the unemployed would provide a more complete measure of the nation's job deficit (page 56).

Three members questioned whether the recommended Current Population Survey expansion to improve state and local data would be worth the cost (page 263).

Two members supported publication of an age-standardized unemployment rate (page 282).

One member favored the preservation of the real spendable earnings series based on the employer survey (page 208).

One member expressed support for a composite measure of labor market related hardship anticipating that such a measure would emerge in time (page 71).●

MARRIAGE TAX TASK FORCE REPORTS

● Mr. MATHIAS. Mr. President, one of the greatest strengths of our American society lies in its approach to change. We are flexible enough to respond to changed circumstance and to alter our laws to reflect the realities of the world we live in. Over the last 20 years we have experienced a major reshaping of our labor force. More and more women are working outside the home to help supplement the family income. I understand that one-half of all married women are working today; by 1990 this figure will rise to three-quarters.

Yet, one of our most powerful means of promoting social policy—our system of taxation—has ignored this trend. This year, I reintroduced a bill, S. 336, that would remove our outdated method of taxing married couples. At present, married people aggregate the total family incomes and file their returns jointly. Although this system is beneficial to traditional one-wage-earner families, it places a severe penalty on couples in which both spouses work. This penalty occurs when the two incomes are combined and filed jointly, placing the second income in a higher tax bracket.

My marriage tax bill would resolve this inequity by allowing all married couples the additional option of filing their returns as single individuals. If it is adopted, each spouse would be taxed according to his or her income, independently of the other spouse's earnings. More than 20 of our colleagues have cosponsored this bill, and Congresswoman FENWICK has, at last count, attracted 175 cosponsors in the House. I think it is clear that the reform effort is gathering momentum.

Mr. President, last week President Carter's Interdepartmental Task Force on Women published a study of the marriage tax penalty. Thoroughly analyzing four possible solutions to this problem, the task force has come out strongly in favor of the approach embodied in my bill as "the simplest way to permanently eliminate the marriage penalty."

Mr. President, so that all of my colleagues may read this report and see the need for reform, I ask that the report be printed in full in the RECORD.

The report follows:

REPORT OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY TO THE TAX SUBCOMMITTEE OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

The Action Group on the Marriage Tax Penalty—Janet Hart (chairperson), Judith Bartnoff, Sydney Key, and Sam Sanchez—met at the Task Force office on May 22, 1979 and had a number of informal consultations thereafter.

This report consists of two parts: first, an explanation of the marriage tax penalty on two-earner couples; and second, the Action Group's recommended solution to the problem.[1]

I. THE MARRIAGE TAX PENALTY

The basic structure of our present federal income tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and married two-earner couples. Thus the common view that the marriage tax penalty represents a conflict between married taxpayers and single taxpayers is incorrect. The marriage tax penalty affects only two-earner married couples, that is, couples in which both the husband and wife work. Such couples, which used to be the exception, have become the norm; at the present time, two-earner couples outnumber one-earner couples. The tax laws, however, still reflect the traditional view of the American family where the husband worked and the wife stayed at home. As a result, according to the most recent estimates, approximately 19 million two-earner couples—38 million individuals—pay a marriage tax to the U.S. government.

Under the present tax system married one-earner couples get the most favorable tax treatment, singles are in the middle, and, in general, married two-earner couples fare the worst. As a result, if a single working person marries someone with no income, marriage will lower the tax bill; this is a comparison frequently made by single taxpayers. But, if two single workers marry (and continue to work), their taxes will usually be higher as a result of their marriage. The difference between the tax bill of two married workers and the total tax bill of the same two workers if they were single constitutes the marriage penalty.

The amount of the marriage tax penalty for a two-earner couple can vary greatly. In general the dollar amount of the marriage tax tends to increase both with the couple's total income and with the similarity of the two incomes. However, the incomes of the two spouses do not have to be equal for the couple to pay the marriage tax. A very rough rule-of-thumb is that two-earner couples pay a marriage tax when the spouse with the lower income earns one-fifth or more of the couple's total income. When the dissimilarity in the spouses' incomes is greater than this, the couple begins to resemble a one-earner couple and may enjoy the traditional tax benefits from marriage.

It is important to realize that, contrary to popular belief, the marriage tax penalty does not affect only the so-called "two lawyer" couple, that is, it does not affect only couples in high income brackets. According to a study by Peter Sailer, an Internal Revenue Service statistician, at least 13 million two-earner couples paid the marriage tax in 1974.[2] Of these 13 million couples, 20 percent had combined incomes under $10,000; 54 percent had combined incomes in the $10,000 to $20,000 range; and 25 percent had combined incomes between $20,000 and $50,000. Considerably less than one percent of the couples paying the marriage tax had combined incomes of more than $50,000.

Mr. Sailer's study also showed that the vast majority of two-earner couples in lower income brackets paid the marriage tax, that is, they did not enjoy the traditional tax benefits from marriage and joint return. For example, 83 percent of all two-earner couples with combined incomes under $10,000 paid the marriage tax in 1974; 70 percent of all two-earner couples with combined incomes between $10,000 and $20,000 paid the marriage tax; and 66 percent of all two-earner couples with combined incomes in the $20,000 to $50,000 range paid the marriage tax. By contrast, of those two-earner couples with combined incomes of $50,000 or more, 48 percent paid the marriage tax.

Moreover, while the dollar amount of the marriage tax may seem relatively small in lower income brackets, it may still represent an enormous increase in a couple's tax bill. For example, a couple earning $5,000 each, as shown in Table 1, would pay a marriage

Footnotes at end of article.

tax of $202; this amount represents a 40 percent increase over the couple's tax bill as two singles. For a couple earning $10,000 each, the increase is 17 percent; the increase is 24 percent for a couple earning $25,000 each.

The major factor causing the marriage tax is the use of tax rate schedules with both rates and zero bracket amounts that differ according to marital status. The tax rate schedules are used to compute one's tax bill on the basis of taxable income, that is, adjusted gross income minus personal exemptions [3] and minus excess itemized deductions, if any.[4] (The tax tables are mathematically derived from the tax rate schedules for the convenience of the taxpayer.) There are four different tax rate schedules. The highest rates are those in the schedule for marrieds-filing-separately; the next highest rates are in the singles' schedule; third, there is the unmarried heads-of-households schedules; and finally, there is the lowest rate schedule, the schedule for married-filing-jointly.[5] The singles' schedule was created by the Tax Reform Act of 1969 in order to reduce somewhat the taxes paid by a single person relative to a one-earner couple with the same income. Until this schedule went into effect, singles had to use the high rates of the schedule for marrieds-filing-separately. Married two-earner couples, however, still must use either the high rates of the schedule for marrieds-filing-separately or aggregate their incomes and use the schedule for marrieds-filing-jointly. Since the U.S. has a progressive tax system, that is, the rate of tax increases as income increases, aggregating the two incomes results in the second income being taxed at higher rates than the first.

In addition to the rates per se, the zero bracket amounts, that is, the amounts of income subject to a zero rate of tax, differ according to marital status. These amounts are $3,400 for a married couple and $2,300 for each single person. Thus even when both spouses work, a married couple has a zero bracket amount of $3,400, which is $1,200 less than the total zero bracket income for two single wage earners, $4,600.

The dependence of a person's actual tax bill on his or her marital status and, if married, on whether his or her spouse works, can be illustrated by the four possible tax bills a person earning $15,000 [6] might have to pay:

(1) $1,635 if married to a non-working spouse;

(2) $2,236 if an unmarried head-of-household;[7]

(3) $2,345 if single; or,

(4) $2,796.50 if married to a working spouse with the same income.[8]

The marriage tax of a two-earner couple each earning $15,000 that was shown in Table 1 can, of course, be derived from these figures. It is simply the difference between their actual tax bill (2x$2,796.50 or $5,593) and their tax bill as two singles (2x$2,345, or $4,690), which amounts to $903. Clearly the present tax laws provide an incentive for two wage earners not to marry, and for two married wage earners to divorce and continue living together; it is, however, impossible to measure the effects of this incentive.

Another question raised by the heavy tax burden on two-earner couples is the incentive provided for a non-working wife to remain at home rather than enter the active labor force. The amounts involved can be illustrated by examining the change in the couple's overall financial status as a result of the wife's new income. The entrance of a married woman into the active labor force (assuming her husband is also employed) results in a dramatic increase in taxes. From the calculations above it can be seen that when the couple lives on the husband's $15,000 salary, he will pay $1,635 in taxes each year. If, however, the wife begins to work at a salary of $15,000, their taxes will increase to $5,593. (The wife's additional salary of $15,000 results in an additional tax of $3,958.) Thus doubling the couple's income multiplies their tax bill by a factor of 3.4. This result occurs because of aggregation of the spouses' incomes, which means that the first dollar of the wife's income is taxed at her husband's marginal rate of tax, that is, at the tax rate on her husband's highest dollar of income. If the husband earned $10,000 and the wife took a job also earning $10,000, once again doubling their income, the impact on the couple's total tax bill would be even greater—the tax bill would quadruple, increasing from $702 to $2,745. It is, of course, extremely difficult to ascertain to what extent the tax system keeps non-working wives out of the labor force, but it certainly provides an incentive for them to stay at home.

Footnotes at end of article.

II. RECOMMENDED SOLUTION

There is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on singles relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same total dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that this principle of spousal aggregation of dollar income should not be taken as a given in the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage. In other words, it is possible to have a progressive tax system that has both no penalty for marriage (no difference between the taxes paid by two married wage-earners and two single taxpayers with same individual incomes) and no penalty for remaining single (no difference between the taxes paid by a single wage earner and a wage earner with the same income married to a non-working spouse).[9]

Once the idea is accepted, there are several policy options for removing the marriage tax penalty on two-earner couples.

The Action Group has concluded that the best solution would be to tax every individual's own income on the same rate schedule (same tax rates, same zero bracket amounts [10] regardless of marital status. This solution would be similar to the situation that existed under pre-1948 tax law in the United States, but with the critical difference that, unlike pre-1948, an individual's own income would, for Federal income tax purposes, be determined without regard to State community property laws.[11] It is generally agreed that Congress has the authority to legislate such a provision. Under the proposed system of one tax rate schedule applicable to every individual's own income, family responsibilities could be accommodated through the use of extra dependency deductions.

Under any system involving individual taxation of each spouse's "own" income, there would have to be some means for allocating income from jointly held income producing property between spouses, and also for dividing deductions between spouses. Generally, with respect to ownership, title should be the determining factor. Where property is jointly owned or deductible expenses are incurred jointly, there should be a presumption that ownership or expense is split 50/50. However, it could be possible for the taxpayers to demonstrate that a different allocation should be allowed. For example, if ownership of a piece of income producing property is split 75/25, the income and associated deductions should be allocated accordingly. Deductions not attributable to property should be split evenly unless the taxpayers choose to allocate these in proportion to their shares of earned income.[12]

The Action Group recognizes that this suggested scheme for property allocation might give couples some leeway for tax planning. However, the Group considers this scheme to be far superior to the current system, under which many couples enjoy the benefits of income-splitting without being required to pay the concomitant costs of transferring title from one spouse to another. This system has, in practice, operated to allow men to retain title to property while, at the same time, "splitting" the income from such property with their wives for tax purposes; this was one of the clear disadvantages to women of the introduction of joint returns and income splitting into the tax system.

Taxation of each spouse's "own" income as an individual does not mean that every married couple would have to file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings both to the Internal Revenue Service and to the taxpayer, married individuals use the same return (hereinafter a "combined individual return" [13]) even though the spouses would *not* aggregate their incomes. The tax would be computed separately of each income without reference to the income of the other. (A similar procedure is used in the District of Columbia, where married persons calculate their taxable incomes and tax bills separately in separate columns on the same return.[14])

The solution of taxing every individual's own income on the same rate schedule does entail problems of revenue loss and political feasibility. In effect, this proposal collapses the present four tax rate schedule into one tax rate schedule to be used by every individual regardless of marital status. If this new tax rate schedule were to be the present schedule for marrieds-filing-jointly, the lowest of the four existing tax rate schedules (as repeatedly proposed, to no avail, by former Representative Edward Koch, now mayor of New York), the resulting loss of tax revenues would be substantial; $25 billion has been suggested as a rough order-of-magnitude estimate. In general terms, this proposal would not change taxes for one-earner couples but would lower taxes for everyone else—unmarried heads-of-households, singles and two-earner couples. If, however, tax revenues were to be preserved by using a new schedule with rates higher than those of the present schedule for marrieds-filing-jointly (for example, the present schedule for heads-of-households or the present schedule for singles), tax rates for one-earner couples would be raised, a political impossibility.

The Action Group believes the most realistic and politically feasible method of achieving the goal of individual taxation would be a two-stage approach. The first stage

would consist of allowing married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for single (same zero bracket amount and same tax rate as a single person.)[13] As described above, the spouses would file a "combined individual return" with the tax on each spouse's own income computed using the singles' tax rate schedule. This first stage proposal is, in fact, contained in bills now pending in the House (H.R. 3609, introduced by Representative Fenwick and 158 co-sponsors) and in the Senate (S. 336, introduced by Senator Mathias and 20 co-sponsors). It should be emphasized that this proposal does not take away any of the benefits gained by singles compared with one-earner couples in the Tax Reform Act of 1969.

Moreover, if this first stage proposal were adopted, since two-earner couples would always have the option of being taxed as single individuals on each spouse's own income, the interests of single and two-earner couples would be identical in effecting the second stage of the transition to individual taxation. The first stage proposal, that is, the Fenwick and Mathias bills, in effect reduces the number of tax rate schedules from four to three by collapsing the schedule for marrieds-filing-separately into the schedule for single individuals. Revenue estimates for the first stage proposal range from $5 to $9 billion, considerably less than the revenue loss from a complete switch to one tax rate schedule using the present schedule for marrieds-filing-jointly. In any event, it is important to keep in mind that the revenue estimates also indicate the seriousness of the problem: the U.S. government is collecting $5 to $9 billion in extra taxes from about 19 million two-earner couples—38 million individuals—simply because they are married rather than living together without being legally married. Thus the Fenwick-Mathias proposal is a critical first step toward the eventual goal of individual taxation with one rate schedule regardless of marital status.

The second stage in achieving the final goal would be to reduce the three remaining tax rate schedules to one tax rate schedule. At this time, wage earners with non-working spouses could be allowed an extra personal exemption for the non-working spouse to reflect the greater burden on that worker's income. Similarly, if desired, some provision could be made for a partial or full extra exemption for unmarried heads-of-households. The important point is that the personal exemption, not rate schedules based on marital status or spousal aggregation of income, is the appropriate policy tool for adjusting tax bills for family responsibilities.

Implementing the second stage would entail a substantial additional revenue loss. This suggests that the two remaining higher rate schedules should be lowered steadily according to a fixed timetable. The gradual alteration of the rate schedules could be carried out as part of the tax reductions Congress enacts almost every year.

Finally, the Action Group would like to indicate why it has ignored the all-too-frequently mentioned policy option of a deduction or credit for the second wage earner. Such credits or deductions are usually equal to a fixed percent of the earnings of the spouse with the lower income, subject to a specified maximum dollar amount.[14] (One example of this approach is contained in a bill introduced by Senator Gravel, S. 1247.) The Action Group has rejected the idea of a deduction or credit for the second wage earner as unfair and arbitrary. It bears no relationship to, and indeed perpetuates, the differences in tax rate schedules according to marital status that cause the marriage tax penalty in the first place.

FOOTNOTES

[1] Some of the material in this report was contained in "Let's Stop the Tax on Marriage," by Sydney J. Key, *The Washington Post* (Outlook), January 29, 1978, in Dr. Key's testimony "The Marriage Tax on Two-Earner Couples" before the House Ways and Means Committee on April 5, 1978, and in "The Marriage Tax" by Sam Sanchez, which appears in the *Interim Report to the President* by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice.

[2] According to Mr. Sailer's calculations, 5 million two-earner couples enjoyed the traditional tax benefits from marriage and a joint return. For these latter couples, the spouses' contributions to family income were so dissimilar that the benefits from income splitting outweighed the factors causing the marriage tax. See Peter J. Sailer "Using Tax Returns to Study Wage and Taxpaying Patterns, 1969 and 1974," *1976 American Statistical Association Proceedings*, Social Statistics Section, pp. 34–40.

[3] Under 1979 tax law the amount of the personal exemption is $1,000 per person.

[4] Itemized deductions may be subtracted from adjusted gross income (AGI) only to the extent that they exceed the "floor" on itemized deductions, that is, only excess itemized deductions may be subtracted. The floors on itemized deductions are, at the present time, equal to the zero bracket amounts: $3,400 for a married couple and $2,300 for a single person, which amounts to a combined floor of $4,600 for two singles. The effect of the difference in floors on the marriage tax penalty depends on the amount of itemized deductions and their division between spouses. At one extreme, two married taxpayers could subtract $1,200 more of their itemized deductions from their AGI than if they were single; their marriage tax penalty would be reduced somewhat but by no means eliminated. At the other extreme, which occurs when only one spouse has deductible expenses, the effect of the different floors is to increase the marriage tax penalty. See Walter Stromquist "Federal Income Tax Treatment of Married and Single Taxpayers," *Tax Notes*, June 11, 1979, p. 735.

[5] The married-filing-jointly schedule incorporates the idea of income splitting, the source of the tax subsidy for one-earner couples. A married couple filing jointly with a total taxable income of $13,000 (which corresponds to an AGI of $15,000 with no excess itemized deductions) is taxes as if they were using the married-filing-separately schedule to compute taxes on two taxable incomes of $6,500 each, regardless of how the income is in fact divided between husband and wife. This can result in a considerable tax savings, because the United States has a progressive federal income tax. In other words, since the rate of tax increases as income increases, the tax on the second $6,500 of a total taxable income of $13,000 is greater than the tax on the first $6,500. When a married one-earner couple with a taxable income of $13,000 implicitly splits their income by using the married-filing-jointly schedule, both halves of their income are taxed at the low rate applicable to the first $6,500. (Rather than going to the trouble of calculating the taxes on the two $6,500 halves and then adding them up, taxpayers can simply look up the tax for a taxable income of $13,000 on the schedule for marrieds-filing-jointly, which has the income splitting calculation built in.) For a one-earner couple with a taxable income of $13,000, the tax savings from income splitting is about $840. On the other hand, a husband and wife with identical incomes gain no benefit from income splitting, since their incomes are in fact divided equally; thus the tax for their total taxable income on the schedule for marrieds-filing-jointly is the same as the sum of their taxes on each individual income on the schedule for marrieds-filing-separately.

[6] The calculations assume that there are no dependents and no excess itemized deductions and that each spouse pays in proportion to his or her share of total earnings.

[7] Most people using the heads-of-households schedule would have at least one dependent; this calculation, based on the assumption of no dependents, is hypothetical only. Introducing dependents into all of the calculations would not, however, change the relative tax bills of the different categories of taxpayers.

[8] If incomes are equal between spouses, it generally makes no difference whether the rate schedule for marrieds-filing-separately or the schedule for marrieds-filing-jointly is used. If incomes are unequal, it is almost always advantageous to use the rate schedule for marrieds-filing-jointly.

[9] The history of the Federal income tax as it relates to these principles is discussed in detail in Stromquist, *supra* note 4, pp. 731–734.

[10] It is assumed that, as at present, the floor on itemized deductions would equal the zero bracket amount and thus be the same for every individual taxpayer. If the floor on itemized deductions should in the future be "cut loose" from the zero bracket amount, the Action Group would recommend that the new floor on itemized deductions be the same for every individual taxpayer, that is, it should not be dependent on marital status.

[11] A major problem in the pre-1948 system and, indeed, a major reason for the change to joint taxation with income splitting, was the decision of the U.S. Supreme Court in *Poe* v. *Seaborn*, 282 U.S. 101 (1930), which held that married residents of community property states could split their incomes for federal tax purposes. (Under community property rules, half of any married person's income belongs, in effect, to the spouse.) The Court's decision obviously gave married one-earner couples in community property states a great advantage over those in common law states, with the result that a number of states began adopting community property laws solely to give their citizens this benefit on their federal income tax returns. After passage of the Income Tax Act of 1948, which extended the benefits of income splitting to married couples everywhere, these states returned to their former common law status. The *Seaborn* decision was, however, based on the legislatively enacted Internal Revenue Code and not on the Constitution, which means that Congress could change the federal income tax law so that each individual would be taxed on his or her own income for federal purposes, without regard to the property laws of the state in which he or she resides. In *Fernandez* v. *Wiener*, 326 U.S. 340 (1945), the Supreme Court held that the federal tax definition of property could supersede the state definition for federal tax purposes.

[12] A similar procedure could be followed for exemptions for dependents.

[13] The term "joint return" should be avoided, since it has become associated with concepts of spousal aggregation of income and income splitting.

[14] The standard deduction in the District of Columbia does, however, depend on marital status. See p. 6 above regarding zero bracket amounts.

[15] In such a first stage approach, allowing two-earner couples to file as singles should be at the option of the couple; at this first stage there is no reason to remove the tax benefit from marriage for two-earner couples

where spouses have widely divergent incomes. It would be relatively easy to have the tax form instructions contain a table showing, for various total income ranges, the income splits at which a two-earner couple would benefit from exercising the option of being taxed as singles. Couples with large excess itemized deductions and/or couples with income splits near the borderline would probably want to calculate their tax bills both ways; the potential tax savings would clearly be worth the extra calculations involved.

[16] It would, of course, be mathematically possible to devise a credit based on each spouse's own income and deductions that would equal the exact amount of the marriage tax for each two-earner couple. Such a credit would produce the same result as the first stage proposal discussed on pp. 12–13 above. However, such a credit would be an unnecessarily complicated way to eliminate the marriage tax penalty. By contrast, the first stage proposal, that is, giving married two-earner couples the option of being taxed as singles on each spouses own income, is much simpler; moreover, not only would it eliminate the marriage tax penalty but also it would reduce the number of tax rate schedules from four to three.●

TAXES AND THE SOCIAL CONTRACT

● Mr. DOLE. Mr. President, the administration's new pay committee will soon be faced with the problem of establishing a wage guideline for the coming year. As is usual with wage standards, the strategy is to use moral suasion and move toward an informal social contract with American workers. The workers are expected to accept wage increases that are below the rate of inflation, the theory being that scaled-down wage demands will dampen inflationary pressures.

It should not be necessary to point out that such an approach can at best be a temporary expedient. So long as the need to finance an expanding Federal deficit keeps feeding inflation, wage restraint can only cause diminished expectations and reduce inflation to the extent that higher wages contribute to the cost-push side of inflation. There is no guarantee that lower real wages will dampen demand so long as people see a never-ending inflationary spiral ahead of them. In any event, at some point the guidelines will be lifted, and whatever progress may have been made against inflation will soon vanish.

The notion of wage and price standards, of a social contract to restrain inflation, has gained much attention in this decade, with its overall high rates of inflation. But wage and price standards do not alone make a social contract, because they are totally one sided. The necessary contract is not between business and labor. It is a dangerous misconception to claim that the private sector alone can keep inflation going and (conversely) that the private sector alone can restrain inflation given proper guidance. No, the necessary social contract is between business and Government, and between labor and Government. A contract means promises on both sides of the bargain, yet we have not heard the Government say what it will do in return for wage and price restraint from the private sector. While this administration often speaks of fiscal restraint and wringing out inflation, it has made no real commitment to the American people that would achieve those goals. Anyone would be well advised to proceed with caution in negotiating a social contract with this administration.

There are concessions the Government can make to the public if it desires wage restraint. The Senator from Kansas has been suggesting many of these, including balancing the budget, moderating the deficit, and adjusting the tax laws to encourage savings and investment that can lead to stable economic growth. But the most significant measure of self-restraint the Government could take would be to forgo tax increases caused by inflation. Workers trying to keep up with inflation demand higher wages, but their salary increases in dollar terms often mean no change in purchasing power—in real income. But wage increases have another consequence—they push people into higher tax brackets. Given the progressive structure of the income tax, higher income means higher tax rates. The income tax is not set up to take account of the fact that high inflation slashes the value of given levels of nominal income.

The outcome is a steady growth in the effective rates of income tax, periodically offset by tax cuts passed by Congress. But those tax cuts do not eliminate all of the inflation tax increase, or taxflation, and they do not benefit the same people as are hit hardest by taxflation. Because the Government has a revenue windfall from taxflation, it has every reason to allow inflation to continue. Ending taxflation should be the first step the Government has to take before it can ask for wage restraint from the public.

The Tax Equalization Act, S. 12, would end taxflation. I introduced this legislation earlier in the year to adjust the progressive income tax brackets for inflation. With these tax bracket adjustments, the tax rates will correspond to levels of real, not nominal, income. Let us show the people that the Government is willing to exercise self-restraint before we ask them to make concessions. We can do it by passing the Tax Equalization Act.●

LIQUEFIED NATURAL GAS TERMINAL

● Mr. HAYAKAWA. Mr. President, over the past 6 years, the Western LNG Associates have negotiated with various Government agencies for approval to finance and construct a terminal to receive Alaskan and Indonesian liquefied natural gas. Since 1973, they have faced interminable delays and barriers, and have come very very close to losing the contract with Indonesia to purchase this gas so desperately needed in California. I believe this situation certainly exemplifies the need for a strong Energy Mobilization Board to expedite such crippling procedures, and I would like to share with my colleagues an excellent editorial from the Los Angeles Herald Examiner which details the situation.

The editorial follows:

A TERMINAL STORY THAT SHOULD LEAVE YOU LAUGHING (OR CRYING)

Have you been following the progress of the proposed liquefied natural gas (LNG) terminal through the state and federal regulatory maze? If you have, then you know why President Carter wants to set up an Energy Mobilization Board to expedite approval of critical energy projects.

To put the travails of Western LNG Associates in perspective, understand that affiliates of Southern California Gas first contracted to buy Indonesian gas in 1973. A few months later, the Japanese also signed gas contracts with the Indonesians. Since then, the Japanese have planned, approved, financed and constructed two LNG terminals. The first was completed in August 1977, the second in September 1978.

By contrast, California's LNG terminal has just received final federal approval. It must now be financed and constructed. And before that can happen, Western LNG Associates must run the gauntlet of environmental suits in the courts, a process expected to take 6 to 18 months.

So if all goes as planned, we'll have an LNG terminal on line in 1983, six years after the first Japanese terminal opened for business.

It's not as if we don't need the gas. California uses clean-burning natural gas to satisfy half its energy needs. When the terminal is operational, the Indonesian and Alaskan LNG it handles will provide fully 25 percent of California's gas in the '80s.

So what's been holding the terminal up? You name it. First the Economic Regulatory Administration (ERA) deliberated at delirious length over whether to approve the price of the Indonesian gas. Then the price was approved, and the siting circus began.

Pt. Conception, you see, is no one's idea of a superlative place to stick an LNG terminal. Little Cojo Bay has vicious weather and notoriously rough seas. The area also hosts a seismic fault of as yet undefined proportions. And the Chumash Indians consider the site sacred, which leads them to look dimly on its future as an industrial park.

All the above caused the staff of the Federal Energy Regulatory Commission (FERC) to decide that the terminal should be cited at Oxnard, not Pt. Conception. But the Legislature's 1977 Liquid Natural Gas Terminal Act specifically prohibited siting the terminal near a populated area. Hence everyone involved with the project was on tenterhooks for six years, waiting to see if the feds would preempt the state Legislature, and demand that Oxnard be the terminal site.

Then the state's Public Utilities Commission got into the act. The PUC tried to do the impossible, and somehow satisfy the objections of the Chumash Indians (which can't be satisfied short of nixing the project), without actually doing that.

What followed was a classic example of jurisdictional bickering between government agencies all trying to "do their job," all pulling in radically different directions, all wasting an inordinate amount of time in the process. And that bickering is largely to blame for the "extraordinary procedural delays and changes of law and policy" which plagued the project, in the asesssment of a man who should know, David Bardin. Bardin heads the Economic Regulatory Administration, through whose offices FERC worked in approving the project.

The federal government, in its wisdom, finally chose to ignore the potential jurisdictional conflict between the Legislature and the Department of Energy. Instead, it gave its untrammeled support to the Pt. Conception site. This was appropriate, since further regulatory delays would have probably caused the Indonesians to cancel their gas contracts

with us. The Japanese, recently bereft of Iranian supplies, would have snapped the extra gas up in a flash, and the Indonesians knew it.

Still, the approval process required far too much time to be completed. When you consider that the Sohio pipeline had to clear more than 700 permits to be built, you know why the pipeline is no longer with us. But when you contrast the size of that shopping list with the 64 major permits the LNG terminal required, it is hard to understand what took six years.

What you may deduce, however, is that an Energy Mobilization Board is an idea whose time has come. We're not talking about the sort of Star Chamber, empowered to override existing environmental legislation, which is envisioned by legislation proposed in the House of Representatives. But we are talking about the kind of board proposed by the president, one with the power to set deadlines for bureaucratic decisions, and expedite the completion of critical energy projects.●

TEACHER CORPS

● Mr. KENNEDY. Mr. President, yesterday Senator NELSON introduced a bill (S. 1853) to extend the authorization for the Teacher Corps through 1983. The current authorization expires at the end of this fiscal year. As chief cosponsor of this legislation I would like to have my statement included in the RECORD.

Fourteen years ago when I first proposed the creation of a Teacher Corps I said:

> If a good education is the key to a better future for the disadvantaged child, then a good teacher is the key to that education . . . if we want these children to learn now, we must provide them with such teachers.

My conviction that this is the case is unchanged today.

Since that time, the Teacher Corps has established a remarkable record. In its earlier years when there was a general teacher shortage, it trained over 10,000 new teachers for disadvantaged children. In more recent years its focus has been on increasing the quality of teachers who are already on the job. A total of almost 30,000 experienced teachers have participated. These teachers have served in schools with more than a million and a half pupils, all of whom have been from low-income families.

Under amendments in 1974 and 1976, which Senator NELSON and I introduced, the course of the Teacher Corps was changed decisively. For the first time it was able to train entire school staffs. For the first time parents and community members were able to participate equally with teachers and college staff in developing and carrying out training programs. For the first time local projects were assured of sufficient time, up to 5 years, to develop and install lasting improvements in their educational systems. For the first time the Teacher Corps was provided with the authority and resources for a long term and extensive program evaluation.

All of these changes were effective last year, during the 1978–79 school year. The first of the new 5-year programs will be completed in 1983, and we should have good evidence of its effectiveness by that time. Our bill, therefore, proposes the continuation of the Teacher Corps authorization without any revision until that time.

While many of the program characteristics of the Teacher Corps have changed over the years, one has not. That is its dedication to solving the most difficult among the educational problems of our Nation—seeking ways to bring lasting improvement to schools serving low-income populations. In supporting the proposed authorization extension my intention is to underscore my belief that the Teacher Corps should continue steadfast on that course, and that it should remain a vital, independent, and strong program within the new Department of Education.●

PAY RAISE LEGISLATION

● Mr. BOSCHWITZ. Mr. President, I agreed with the action taken by the Senate recently to deny pay increases for Members of Congress, and I decry the efforts of the House which raised the issue again, whereupon the House sent it to us and left town on a recess.

I support the motion made by my colleague from Florida, Senator STONE, which would defer any future congressional pay increases until after the next general election. This will enable taxpayers to make their wishes known.

I further believe that Congress should not receive pay raises while inflation is not under control.

However, I do feel that top-level Federal employees should not be penalized for Congress inability to bring inflation under control by limiting Government spending. For this reason, I supported the motion to give those Federal employees a 5.5 percent pay raise.

Had either of the measures effecting congressional pay been brought to a vote, I would certainly have recorded an "aye."●

FEDERAL ELECTION COMMISSION AUTHORIZATION

● Mr. HUMPHREY. Mr. President, recently, the House leadership pulled from immediate consideration the routine Federal Election Commission authorization, S. 832. This action was apparently taken because of the controversy which has arisen in recent days over a proposed nongermane amendment which strikes at the very heart of our election system, the so-called Obey-Railsback amendment. The Obey-Railsback amendment would limit political action committees' participation in the election process.

The American people and their elected representatives must not be deluded by the proponents of this amendment who foster the false idea that political action committees are evil. The fact is political action committees have increased grassroots participation in politics by citizens who never before involved themselves.

A brilliant rebuttal by Congressman BILL FRENZEL of Minnesota appeared today on the editorial page of the New York Times. His thoughtful analysis of the role that political action committees play should be thoroughly considered by all of us here in Congress. Many have been seriously misled about the consequences of a measure such as the Obey-Railsback amendment. I commend this article to the attention of my colleagues. I ask that it be printed in the RECORD at the close of my remarks.

The article follows:

[From the New York Times, Sept. 27, 1979]

ON THE BILL CURBING INTERESTS' GIFTS

(By BILL FRENZEL)

WASHINGTON.—A bill that the House may be soon asked to consider is designed to reduce the amount of money that a political-action committee, or PAC, can give a House candidate and the amount any candidate can receive from all PAC's. Its high-minded sponsors believe it would magically prevent alleged "special-interest" manipulations of the Congress. None of the bill's supporters has been able to identify any House member who has been unduly influenced by any interest, nor have they shown that PAC contributions are a greater, or less great, influence than editorials, direct lobbying, demonstrations or independent expenditures.

Before Congress changes a law, there is usually, and ought to be, proof that a system needs repair and that the proposed repair will be successful with a minimum of undesirable side-affects. There has been no such demonstration with the bill under consideration, sponsored by Representatives Tom Railsback, Republican of Illinois, and David R. Obey, Democrat of Wisconsin, partly because its sponsors so far have been afraid to subject it to committee hearings, and partly because their rationale that PAC's are evil is based on subjective "feelings."

Every nickel that PAC's contribute to candidates is voluntarily given by individuals. Those contributions are subject to disclosure and limitations just as they would be if direct contributions were made to candidates.

The growth of PAC's is normal and natural. They were not sanctified by regulations and law until 1974. Since then, they have grown rapidly because individual contributors like them. People like to be identified with them. People like to be identified with their union, professional group, corporation or ideological group. They also like to have their contributions identified with the PAC's of the so-called special-interest groups.

In the last 20 years, as political parties have become less popular and confidence in government has fallen, PAC's have been the greatest—in fact, the only—institution in our society that has encouraged and expanded political participation by the public. PAC's have encouraged tens of thousands of people who never were active politically to participate in our political processes.

Every cure has some side-effects. The Obey-Railsback measure, which cures only a fantasy, has a ton of adverse side-effects in addition to quashing political participation. Many of them, especially protection of incumbents, are wholly intentional. The bill would have the following effects:

1. It would leave typical candidates defenseless against rich candidates whose unlimited right to contribute to their own campaigns is protected by the Constitution. PAC contributions are often the only balance to rich candidates.

2. It especially penalizes challengers who need to spend heavily to gain identification equal to incumbents. The Kennedy Institute at Harvard recently reported to Congress that not enough money was being spent in campaigns, a finding that we believe supports our position;

3. It would leave Big Labor with its enormous legal advantages to spend the involuntary contributions of its members—union dues—for political purposes Without PAC's, labor's political power is unbalanced.

4. It would increase fund-raising costs. Current limits on contributions have forced

candidates to use direct mail, by far the most expensive fund-raising device. That trend would be exacerbated by the bill.

5. It would penalize candidates with competitive primaries who would have to squeeze two elections out of one contribution limit.

6. It discriminates against an oppressed minority, Republicans. Fourteen of the 16 Republican challengers who defeated incumbent Democrats in 1978 elections received more contributions from PAC's than they would be allowed under the bill. Under its limits, many of them probably would not have won.

The bill seems to rely on the same limited constituency that unsuccessfully tried to pass taxpayer financing of House elections—incumbents, Common Cause, and the A.F.L.-C.I.O. Each group would be aided by its passage. Their strategy is to limit PAC contributions so that Congress will be forced to turn to taxpayers' money to pay for its own re-election. Taxpayer financing ought to be able to stand on its own feet, or fall, as it did, of its own weight.

The Federal election law that restricts contributions and requires disclosure provides ample opportunity for people to decide if certain contributions add up to "undue influence." The people's best defense against alleged corruption in Government is to vote the rascals out.

Laws that further restrict political participation and political expression deserve to be defeated.●

FINANCIAL MANAGEMENT SYSTEMS IN DISTRICT OF COLUMBIA

● Mr. EAGLETON. Mr. President, on October 1, the District of Columbia Government began implementation of a computerized accounting system known as the Financial Management System (FMS). This is an important landmark on the path to full and fiscally responsible home rule for the District.

The origins of the FMS go back to 1976, when the accounting firm of Arthur Andersen & Co., reported that serious deficiencies in the District's accounting and financial management practices made it virtually impossible to conduct a meaningful audit of the District's books. Andersen found that the problems had evolved over a long period of time, attributable in large measure to the fact that prior to home rule, the District was treated as a Federal agency, not a municipality. The accounting firm fully documented the depth of the problem and recommended creation of a new financial system.

In response to the Andersen report, Congress, in September 1976, enacted Public Law 94–399, which established the Temporary Commission on Financial Oversight for the District of Columbia. Comprised of three members each from the Senate and the House, the Mayor of the District and the city council chairman, the Commission was charged with organizing, directing and overseeing the new system. The legislation also assigned to the General Accounting Office the responsibility of monitoring the Commission's work and approving phases of the system's implementation. As a benchmark of the city's general health, the legislation called for a full audit of the District's books for fiscal year 1980.

Now, 3 years after its formation, the Commission, in conjunction with GAO, has determined that the new FMS is ready for implementation. Designed by American Management Systems, Inc., the system represents the most up-to-date utilization of computer technology for accounting and budgetary planning. When fully operating, the system will provide reliable information about the District's assets, liabilities, expenditures, and fund surpluses or deficits. The system will keep track of cash accounts, supply inventories and, together with subsidiary systems, the daily status of bills and payments for traffic tickets and such items as water-sewer services, health treatments, and even library fees.

Any new elaborate computer system carries with it some bugs. The Commission anticipates some complications and slowdowns, and in certain areas, perhaps up to a year of minor problems which will call for public and congressional patience. But the Commission believes that the benefits of implementing FMS at this time far outweigh any minor inconveniences. With FMS operational, the District should receive a clean bill of fiscal health for fiscal year 1980, enabling the city to enter the municipal bond market. In fact the Commission believes that through the process of preparing for FMS, the District has already made significant progress toward capable fiscal management. For that reason, the Commission, with the enthusiastic support of the city, has recently commissioned a balance sheet audit for fiscal year 1979. This partial audit—undertaken a year in advance of the statutorily required full-scale audit—should serve as a midterm exam, highlighting progress and pinpointing any areas of remaining difficulty. If successful, it would also allow the District to enter the bond market a year earlier than it otherwise could.

Many people in the city, in the Federal Government, and in the private sector, have contributed to the job of making the FMS a reality and improving the District's financial management in general. Special tribute should be paid to Mayor Marion Barry and Council Chairman Arrington Dixon, who have recognized that improved financial management deserves to be given the highest priority by the city government. City Administrator Elijah Rogers and Assistant City Administrator Colin Walters have given full support and provided leadership for the many city employees who have been deeply involved. Comptroller General Staats and GAO have contributed countless hours and careful analysis to this problem. I also want to commend Bruce Rohrbacher, the Commission's indefatigable Executive Director, who after 25 years as a partner in the noted consulting firm of McKinsey & Co., has brought his great expertise to the Commission. It is his efforts more than any other which have made implementation of FMS possible at this time.

Mr. President, the Federal Government has an absolute responsibility to help correct problems encountered by the District government, when those problems arise from conditions which the Federal Government created, or imposed prior to home rule. That is simple justice. By rights, Congress should have insisted on fixing the financial management system of the District prior to passage of home rule legislation. Through the work of the Commission, we rectify that error and lay the groundwork for sound financial management in the years to come.●

THE WASHINGTON OFFICE ON LATIN AMERICA

● Mr. KENNEDY. Mr. President, recent events in Latin America such as the overthrow of President Somoza in Nicaragua, the discovery of extensive oil reserves in Mexico, and the rapid economic and political development in Brazil demonstrate that United States relations with our southern neighbors can no longer be on the back-burner of our foreign policy.

In my own work, and I am sure the work of many of my colleagues, the Washington Office on Latin America, under the able direction of Rev. Joseph Eldridge, has long been a valuable source of information and advice. I would not call WOLA dispassionate or neutral. Indeed, WOLA is completely dedicated to the cause of human rights and progress in Latin America. And it is totally committed to the truth about this vital part of the world.

I wish to commend to my colleagues this private, church-affiliated organization, known and respected as a dependable source of information on current issues from the Rio Grande to Tierra del Fuego.

I am not the only one to recognize WOLA's effectiveness and concern. For in a letter of September 6, 1979, the Conferencia Nacional Dos Bispos Do Brasil wrote of their "high regard" for WOLA. The National Conference of Brazilian Bishops has represented a consistently credible voice in one of the most important countries of this hemisphere. I would like to draw my colleagues' attention to the Bishop's letter concerning WOLA, and in the process to let my colleagues know of this organization's fine work.

Mr. President, I ask that the September 6, 1979, letter of the Conferencia Nacional Dos Bispos Do Brasil be printed in the RECORD.

The letter follows:

BRASILIA,
September 6, 1979.

Ms. FRANCES NEASON,
Secretariat for Latin America, National Conference of Catholic Bishops, Washington, D.C.

DEAR MS. NEASON: I would like to bring to your attention the fine work of the Washington Office on Latin America. We have high regard for the work of this office, finding its goals very consistent with the goals of the Church in Brazil. Any support the Secretariat for Latin America of the US National Conference of Catholic Bishops can provide the Washington Office on Latin America would be regarded as a service to the Church of Brazil itself.

With highest regards for you and for the Secretariat for Latin America, I am,

Sincerely yours,
LUCIANO MENDES DE ALMEIDA,
General Secretary of CNBB.●

JUDICIARY APPOINTMENTS

● Mr. HUMPHREY. Mr. President, there is language in the Senate version of the continuing resolution (H.J. Res. 404) which refers to the standing of a Senator to challenge in Federal district court the appointment of anyone appointed during the 96th Congress to the U.S. Court of Appeals for the District of Columbia, on the ground that his appointment and continuance in office are in violation of article I, section 6, clause 2, of the Constitution. This language has been included to insure that the judicial branch will have an opportunity to exercise their constitutional duty, under the authority of Marbury against Madison, to say what the law is. With this language, the legislative branch recognizes that the judicial branch is the interpreter of the Constitution. Senate continuation of a person prohibited by the Constitution from taking a civil office would render a Senator's vote void, as if he had never cast it. Additionally, an unconstitutional appointment would deprive a Senator of his future opportunity to vote for an individual who, in contrast, actually was constitutionally qualified for appointment to and the holding of that particular office. Since the appointment of a constitutionally disqualified person diminishes the effectiveness of a Senator's representation of the people of his State, venue should lie in his home State.●

TELLICO DAM

● Mr. BAUCUS. Mr. President, President Carter has just signed into law a bill providing money for the completion of the controversial Tellico Dam in Tennessee. Thus ends more than a decade of wrangling which saw the issue debated in the Supreme Court, the Congress and the executive branch.

Opposition to the project centered early on its impact on the snail darter, a tiny fish whose only habitat would have been destroyed by the dam. In time, the fish was successfully transplanted to other streams in Tennessee and Kentucky, thereby lessening the endangered status of this species and removing this obstacle from construction of the dam.

Another issue remains unresolved, however, even with the President's signature. This has to do with the fiscal integrity of the project—and of similar water projects. I am vitally interested in this issue because a dam in my State is receiving similar attention.

This Nation has a long history of support of multipurpose dams. The structures have permitted reclamation of huge areas of land for farming; they provide much-needed electricity to power our homes and factories; they impound waters which are used by tens of millions of recreation enthusiasts annually; they have prevented untold billions of dollars of devastation by flooding.

Because such projects have been universally viewed as positive, many have also been authorized and built with little critical review. As a result, huge sums of money have been poured into some projects when careful analysis might have shown a better use. Tellico is a good example.

The snail darter issue stopped Tellico when construction was well over 90 percent complete. The pause permitted analysts to review the benefit-to-cost ratio. A specially constituted Cabinet-level review board concluded that upon completion, annual benefits would total $6.52 million while the annual cost would be $7.25 million. In the process, it would flood 20,000 acres of prime farmland worth approximately $40 million and displace 350 families, many of whom have been on the land for generations. Even the Tennessee Valley Authority, under whose auspices the project was initiated, dropped its support for completion of the project.

The Tellico Dam was kept alive by questionable parliamentary tactics in the Congress and then inserted in an omnibus energy and water bill which the President could veto only at great risk to other parts of his program. Mr. Carter reluctantly signed the bill.

Proponents used the argument that so much money had already been spent that it would be wasteful not to proceed with the project. This is a familiar argument to me. Similar rationale is being used with respect to a dam in my State. The difference is that our dam, a smaller regulating structure to be located below Libby Dam in northwestern Montana, has hardly proceeded beyond the groundbreaking stage. But the same reluctance to reexamine its economic underpinnings is being shown.

Libby Dam was authorized by the Congress in 1950, but had to await the signing of a United States-Canadian treaty in 1964 so that its impounded waters could back across the Canadian border. Construction began on the main dam in 1966, the reservoir began to fill in 1973, and power began to flow from the first four turbines in 1976. The schedule had called for installation of the remaining four turbines, bringing the total output to 840 megawatts, by 1983.

From the moment the first four turbines became operational, the Corps of Engineers began using them for peaking power. The resultant river fluctuations caused a public outcry which in turn resulted in a major reexamination of the entire project. Special attention was focused on a planned reregulation dam 10 miles downstream on the Kootenai River which would even out the surges of peaking power released by the main dam.

Ultimately a law suit was filed and a Federal judge ruled that: First, the reregulation dam was never authorized by Congress; and second, violations of the National Environmental Protection Act occurred during its planning. An injunction against further construction was issued, and it remains in effect today. In addition, serious questions were raised about the operation of the main dam for peaking power—a commodity which many claim is in surplus in the Northwest today.

Mr. President, the Libby reregulation dam will ultimately cost, counting inflation, at least a quarter of a billion dollars. This sum is small in comparison to that of Tellico. However, it is substantial and the principal involved in spending for each project is the same. Are we getting our money's worth? Is this the wisest way to invest our money?

How is a legislator expected to make a judgment on the validity of a costly project? What objective analytical tool is available to one who wants to make the right decision? I submit that the only way is a thorough, impartial review of benefits and costs, periodically updated if need be.

The President coupled his signing of the Tellico measure with a call for a high-level review board under the direction of the Water Resources Council. I support the creation of this type of body whose sole job will be to sort out the charges and countercharges on water projects. Had this service been available many years ago, we would probably have been spared the agony of Tellico—and hundreds of farm families would be getting on with their lives in central Tennessee.

Such a board would also be most helpful in establishing facts on the Libby reregulation dam. The Libby project was originated in 1950 by act of Congress. During the long waiting period, lifestyles and public values changed but were not reflected in the mandate for the dam. With the Court injunction, an enforced lull has resulted. I attempted to get the Corps of Engineers to go back to ground zero and reestablish the economic justification for the project. The agency refused. I have since asked the General Accounting Office to perform the task. The GAO is now performing a study, but of necessity it is less detailed than I would have preferred.

Mr. President, I do not wish to prejudge the Libby reregulating dam. I simply want the facts on which to make the most informed decision. But there is great resistance to the search. I would say to the proponents of construction that they have as much to gain as anyone from an airing of the facts. One's integrity is intimately tied to the validity of one's arguments; where questions arise as to the dependability of facts, there is no substitute for an openminded search for the truth.

We are embarked in the Congress and in the Nation on the creation of a national energy package. Hydropower will play a heightened role in the production of energy. But we must place our energy tax dollars in those technologies which yield the greatest return. In some cases, it will be hydropower. In others, it may be power swaps, or insulation, or renewable power sources. The times demand a critical review of every energy project, especially those which are costly and about which serious questions are raised.

I endorse creation of an impartial Water Projects Review Board and I will continue to insist on a thorough reexamination of the Libby reregulation dam project.

I thank the Chair.●

CITIZEN RESPONDS TO RHODES PROFESSOR

● Mr. HUMPHREY. Mr. President, in a speech on the Senate floor last week, the distinguished minority leader (Mr. BAKER) called on Secretary of State

Cyrus Vance to apologize to the distinquished Senator from North Carolina for what the minority leader called "the spreading of untruth about Senator JESSE HELMS."

The State Department had earlier leaked to the press a statement to the effect that the British Foreign Minister had lodged a complaint over the presence of two aides of our distinquished colleague from North Carolina, at the London Conference on Rhodesia. The report was categorically refuted by the British Foreign Minister.

These erroneous press reports led to unfavorable reaction on the part of some editorial writers and by a few writers of letters to newspaper editors.

In response to such reporting by the Washington Post, a Rhodes professor at Oxford University wrote a letter of criticism of the distinguished Senator from North Carolina.

A private citizen, Mr. Tom E. Moore of Springfield, Va., has written a letter in response to the Oxford professor.

Mr. President, I ask that Mr. Moore's letter to Prof. J. R. Pole at Oxford University, be printed in the RECORD.

The letter follows:

SPRINGFIELD, VA.,
September 27, 1979.

Prof. J. R. POLE,
St. Catherine's College, Oxford University, Oxford, England

DEAR PROFESSOR POLE: Regardless of the rights, wrongs, or even indifference involved in Senator Helms' actions vis-a-vis the discussions now on-going concerning Rhodesia, actions which are not subject to any approvals by "high" officials in the United States or Great Britain, the Senator has grave concerns about the British position, which, in effect, declares an "open season" on white people and others, and a recognition of Marxist guerrillas, "freedom fighters," as "the Patriotic Front." No. U.S. law is involved.

Senator Helms seems to take the following positions, as I have deduced from what he has said, reported in the Congressional Record:

1. White people have the right to survive in peace and safety in Africa, even in Zimbabwe-Rhodesia.

2. Black people who are reasonable enough to understand that all people, white and black, attempting to live in peace and safety in Zimbabwe-Rhodesia, should also be permitted to survive in that condition of peace and safety. (This is a cause badly misunderstood by "the Patriotic Front.")

3. Contingent upon the foregoing is the belief that airline passengers (black, white, yellow, red, or green) have a right of peaceful transit in all the safety which technology can provide, which, also, is a cause misunderstood by "the Patriotic Front."

4. Missionaries from Britain, and their families, have the same rights, also a cause misunderstood by "the Patriotic Front."

5. The commerce, industry, and defense of the free (non-Marxist) world depend heavily upon raw materials from Rhodesia and South Africa; materials which make the wheels go 'round. The availability of some of the materials otherwise is controlled by our common enemy.

6. Andy Young, whose influence in Africa, upon Jimmy Carter, upon Lord Carrington, and upon Mrs. Thatcher has been of undue weight, does not speak and has never spoken for the people of this country.

7. The government which was established recently in Zimbabwe-Rhodesia represents the majority of the war-weary people of that beleaguered land, and we, on both sides of the pond, should applaud and support that government rather than continue to erect stumbling blocks in its way. It is as legitimate as the government of these colonies.

I applaud the Senator's efforts, and in my estimation his "name (leads) all the rest" (apologies to Leigh Hunt, Englishman, of another and perhaps more noble generation). I cannot judge your motivations in being so highly critical of Senator Helms, but I should expect similar action from the university intelligentsia in this country, the principal repository of sympathy for, "understanding," and admiration of all things Marxist and pro-Russian.

Sincerely,

TOM E. MOORE.

A WARM WELCOME FOR POPE JOHN PAUL II

● Mr. WILLIAMS. Mr. President, the United States has the great privilege this week of hosting Pope John Paul II.

Millions of Americans, Catholic and non-Catholic alike are welcoming him to our country and listening to his message. He is the first Pope to ever make such a tour of the United States and the first in centuries to undertake a world tour. The uniqueness of his visit makes his stay here all the more precious and I am sure I voice the hopes of millions when I wish that he could be with us much longer than a week.

The exuberance and joy which has greeted his visit is, I believe, testimony to his special kind of spiritual leadership of one of the world's largest religious groups, and to his warmth and love for all of mankind. He has personalized the papacy, and infused it with the celebration of his own priesthood, encouraging others to take inspiration from their faith, and to draw closer to one another in unity and peace.

Seeking to carry his pastoral mission worldwide, Pope John Paul II has welcomed everyone to join his mission to build the family of mankind, and he has encouraged people of all faiths to put aside their prejudices and disagreements. As he stated in Ireland last weekend before an audience hailing from the wartorn north, "I beg you to turn away from the paths of violence and return to the ways of peace." His mission carries an important message to all people, all ages, and all races.

He is proof that a strong and growing faith is alive in Poland and other Communist countries, and he reminds us that political, national, and social diversities do not have to override a strong faith. His message, I believe, can be appreciated by people from all walks of life and his lessons can be understood by all faiths.

I join my colleagues in the Senate and millions of Americans in welcoming Pope John Paul to the United States, knowing that his message will be received by open hearts.●

ILLINOIS BRICK LEGISLATION

● Mr. STEWART. Mr. President, one of the most difficult and complex issues that I have considered since coming to the Senate is the so-called Illinois Brick legislation, S. 300. This bill would overturn the Supreme Court decision which held that indirect purchasers from antitrust violators may not sue and recover treble damages under the Clayton Act. After a long and detailed study, I have concluded that I cannot support the enactment of S. 300 as reported by the Judiciary Committee.

Few people would argue that the country needs effective antitrust litigation. I am well aware of the deterrent effect of the Clayton Act. However, the interest of neither business nor consumers would be served by the enactment of S. 300.

When the Supreme Court considered Illinois Brick in 1977, they expressed several concerns in rejecting suits by indirect purchasers. One of their concerns was over the burden that the court system would be forced to bear if indirect purchasers were allowed to sue. Our courts are already overcrowded. Antitrust lawsuits are perhaps the most complex cases to ever enter our court system. To ask our courts to handle these cases would place on them an additional case load, ultimately resulting in increased expenditures of taxpayer dollars. This burden would, in my judgment, outweigh any benefit to consumers resulting from S. 300.

Even though indirect purchasers will not have the right to sue for antitrust damages if S. 300 is not passed, direct purchasers will still have this right. And, direct purchasers brought the vast majority of price-fixing cases in the years preceding Illinois Brick. The real deterrent, then, is the fear of suit by such a direct purchaser, with the possibiilty of treble damages. This deterrent exists presently, without the passage of S. 300.

Another problem that I have with S. 300 is that it would subject innocent middlemen to expensive litigation. Businessmen across America already are forced to bear expensive legal costs in order to comply with Government regulation. I do not believe we should add additional costs to these businesses by the passage of S. 300.

So, even though S. 300 is offered as a consumer bill, I am not sure that it would protect the consumers of America. In fact, it might harm the consumers, as well as business. For these reasons, I oppose S. 300 as written.●

PARENTS—HOME LIFE: THE SINEWS THAT BIND OUR NATION TOGETHER

● Mr. WARNER. Mr. President, today in the capital city of the Commonwealth of Virginia which it is my great honor to represent, a large group of concerned citizens from Virginia and elsewhere has come together for the Statewide Conference on Parenting. They are meeting because they believe that parents make the vital difference in improving our lives and our children's lives.

And it is my own firm conviction that parents lay the foundation for the very moral fabric of our great Nation.

Mr. President, I attach such importance to this subject and I am so proud of the work being done by the dedicated

members of this conference, that I wish to submit my statements to them to be printed in today's RECORD.

The remarks follow:

It's appropriate that your Statewide Conference is being held in Richmond—not only because it's the capital of our Commonwealth, but because the Richmond Public Schools "Follow Through" program has achieved such national distinction. As a Virginian and a parent, I am proud of that recognition—and I join you in applauding the leadership of Dr. Russell Busch, Mrs. Virgie Binford, and all the dedicated participants in that excellent program.

The success of Follow Through—not only in Richmond but around our state and nation—is a tribute to the enlightened efforts of all of you—teachers, parents, administrators, and para-professionals alike.

You are engaged in one of society's most important works—helping and guiding our children, by helping and guiding their parents.

You recognize, I know, that parents are the most important teachers a child will ever have. You seek, I know, not to shift responsibility from the home to the school or to any other institution—but to help parents do a better job themselves.

You seek not to substitute for parents, but to supplement and strengthen them. And in so doing, you are shoring up the foundations of our society.

For the ultimate, rock-bottom underpinning of our social order and our free system is the responsible home that raises up responsible citizens to take their places in a responsible society.

Being a parent can be the world's toughest job—and I think most parents would agree that they can use all the help they can get.

It's tough enough to be a parent in any age—but it's especially difficult in today's chaotic and changing world. There's an awful lot of "parental panic" going around.

The world changes every day. Old truths are challenged. Old values are turned upside down. Many parents are unsure and confused. They're not quite certain what they themselves believe in—let alone what they should tell and teach their children.

Some parents have lost their way, and don't know how to help their children to find theirs. Often they hestitate to saddle their children with their own values—believing and hoping, instead, that their children can be better off if left to find their own way and establish values for themselves.

But what a tragedy it is—what waste and loss—when parents give up on parenting; throw up their hands in despair, and by their own example tell their children that nothing matters anymore—nothing is solid, nothing is real—that ideas, like right and wrong, truth and falsehood, responsibility and self-indulgence, have no enduring meaning anymore.

For parents are teachers, whether they want to be or not and—they are teaching even when they refuse to teach. Children will learn. The only question is: What will they learn?

Sure, parents are people—and people make mistakes. But I think parents need to understand that mistakes made out of love and caring and mutual respect are never irreversible.

Every parent can do a better job if only he or she remembers what it was to be a child—if only he or she can listen with a child's ears, see with a child's eyes, and feel with a child's heart.

Parents can foster open, free communication with their children, without surrendering their rightful, necessary role. In the give-and-take of a warm and loving family, children can learn both to assert themselves and to respect others.

Children can even learn to negotiate—boy, can they ever! But they can also learn that some values are truly non-negotiable.

They can learn—and parents can learn with them—that some of the old, traditional values still apply and work as well today as ever in the past.

Honesty works. Responsibility works. Self-reliance, discipline and diligence all work. Religion works. Love works.

It seems to me that the two great needs that children have are *love* and *limits*. Providing both at once is the parent's highest calling—and its fulfillment can be warm and rewarding to the child and to the parent.

Parenting is the greatest challenge that any man or woman ever faces. It's tougher work than being a United States Senator. And it's the greatest opportunity any of us will face in all our lives.

So I salute you, dedicated workers all. Next to the task of parenting itself, no calling is more important than your own—to strengthen the home life of American families.

For home life is the sinew that binds our Nation together, and is the greatest hope of our future.

Thank you very much.●

THE RETIREMENT OF GEORGE MEANY

● Mr. WILLIAMS. Mr. President, last Friday George Meany announced that he will retire in November when he completes his 12th term as head of the Labor Federation.

Mr. Meany is a man who has been at the center of American economic and political life for more than a quarter century.

In every generation, there are a handful of men and women who, because of their ideas, courage, and determination, rise to and remain at center stage in the political life of their country. George Meany is one of those men. He has combined a strong will, keen intellect, an unswerving commitment to his cause and a clear vision of the future, to mold a strong and important role for the people he represents.

George Meany's roots are in the American trade union movement. His commitment to win greater dignity and economic security for workers has remained with him since the early struggles of the labor movement. His outlook today continues to reflect his deep faith in the uniquely American conception of the role trade unions should play in our society.

George Meany has never wavered in his belief that democracy is the only sure way to protect the true interests of working men and women. He has believed that workers themselves must articulate their goals and run their own institutions rather than delegating this responsibility to others. He has understood that the clearest and best means of providing workers with economic power depends on their ability to organize and engage in free collective bargaining.

The mark of a true leader is one who can harness the divergent forces of a movement, articulate the broad goals and common interests of its members, and mold it into a united, proud, and efficient organization capable of uncommon deeds.

From the moment he became President of the American Federation of Labor in 1952, Mr. Meany set about to unite a labor movement which had been bitterly divided for almost 20 years. Three years later, that goal was achieved and Mr. Meany became the president of the Labor Federation, the post he holds today.

It is a sign of his sound judgment and understanding of history that Mr. Meany considers the successful merger of the two great factions of American labor as his proudest and most significant achievement.

But if the federation's unity has been central to the labor movement's ability to represent the interests of its members, it has been Mr. Meany's refusal to take a narrow view of that role which has had the most significant impact on the life of workers in our country. For he has understood that the ability to attain economic security may be diminished if workers do not exercise a corresponding right to full participation in the political process.

From the time he became president of the New York State Federation of Labor in 1934, George Meany has been involved in virtually every great legislative battle in our time. Many have directly concerned the interests of union members. But the majority have addressed issues far broader in scope. George Meany has always believed that workers must join the poor, the disadvantaged and the disenfranchised in their struggle for equality and dignity.

As one who has sponsored or supported most of the major pieces of social legislation enacted by the Congress over the past 20 years, I can unequivocally state that most of that legislation simply could not have been passed without the assistance and support of George Meany.

Samuel Gompers, who first molded and brought unity to the American trade union movement, spoke of a tradition which George Meany inherited. Gompers said in 1898:

> Trade unions . . . were born of the necessity of workers to protect and defend themselves from encroachment, injustice and wrong; to protect their lives, their limbs, their health and their liberties as men, as workers, as citizens.

For 50 years, George Meany has continued in the tradition of Samuel Gompers. He has never wavered from his commitment to democracy—both for our country and the trade union movement. He has remained unswervingly committed to the use of the ballot box and the legislative process in the pursuit of labor's goals, and he has been steadfast in this commitment even when labor's opponents have sought to minimize or deny workers the opportunity to participate in this process.

Between now and the time Mr. Meany retires in November, I will have more to say on his lengthy and illustrious career. From now I will conclude by expressing my own gratitude to him for the support and friendship he has shown me in the past and for the service he has rendered to our country and its working people.●

SHORE UP NICARAGUA'S MODERATES

• Mr. CRANSTON. Mr. President, yesterday's Wall Street Journal carried a thoughtful article on Nicaragua by Roy Prosterman and Jeff Riedinger, two development specialists from the University of Washington, who recently returned from 2 weeks in Nicaragua. While the political and economic situation in Nicaragua remains fluid, the new Nicaraguan leaders are struggling to rebuild their country and are looking for assistance in their efforts. It appears that the Sandinista leaders have not, as many feared, become surrogates for Fidel Castro. Based on their firsthand observations, Prosterman and Riedinger point out—

Indeed, the refrain "Sandinismo si, communismo no" has begun to be heard, typified by a recent incident in Moninbo, where the villagers rejected Cuban help in reconstruction that did not include the rebuilding of their church.

However, we should not discount Castro's interest in Nicaragua nor Cuba's potential for exploiting a bankrupt country torn apart by civil war. But if we understand the vulnerability of Nicaragua's precarious economy—which provides such tempting opportunities for exploitation—the United States can also respond in constructive ways to meet the challenge of Nicaragua's reconstruction head on.

The authors recommend four specific courses of U.S. action:

First. An immediate infusion of commodity assistance;

Second. An increase in private, risk-guaranteed commercial lending;

Third. Short-term debt rescheduling; and

Fourth. An expanded international aid program over the next 4 or 5 years.

As my colleagues contemplate what the nature and level of U.S. assistance to Nicaragua should be, I urge the Members of this body to consider these four proposals, as well as think about the consequences of inaction.

The authors caution us that—

If we do not act, adequately and in time, there will be a Vietnam-style flow of hundreds of thousands of refugees that will almost certainly end up costing us much more than a direct aid program would—this apart from the vast indirect costs of such a failure.

But, with an effective U.S. response, there is, in the words of one foreign businessman who has long lived in Nicaragua, "not just a long shot but an excellent chance, that a moderate, democratic solution will last." Such U.S. flexibility in adapting to and supporting this moderate alternative would, moreover, do much to pave the way for similar outcomes in such presently chaotic Central American societies as El Salvador and Guatemala, and beyond.

Mr. President, I agree completely with that final analysis and commend the entire article to my colleagues' attention. I submit for the RECORD the article entitled "Shore Up Nicaragua's Moderates."

The article follows:

SHORE UP NICARAGUA'S MODERATES

(By Roy Prosterman and Jeff Riedinger)

The new Nicaraguan government to date has proved a surprise: far more rational, moderate and democratic than almost anyone could have hoped in mid-July. There have been no officially sanctioned executions and few reprisals, a free press is functioning side-by-side with Sandinista organs and the broadly representative junta leads the government not only in name but to a considerable extent in practice.

Nationalizations have been limited to Somoza-controlled enterprises, except for domestically owned banks, where reasonable compensation arrangements have been made and a huge burden of debts of doubtful collectibility has been assumed. The land redistribution has started as a flexible one, with a mix of individual holdings, small coops and larger units to be tailored to crop and region, and the business community has been reassured.

Indeed, the refrain "Sandinismo si, communismo no" has begun to be heard, typified by a recent incident in Moninbo, where the villagers rejected Cuban help in reconstruction that did not include the rebuilding of their church.

Still, the situation is precarious. Perhaps 20% of the Sandinista movement that overthrew the Somoza dictatorship are dedicated Marxists. In Managua, the capital, street vendors sell the last of the goods stolen during the upheaval of the revolution. Within weeks, unless sufficient aid is received from the outside, the last inventories will be gone, and Nicaragua will run out of all imported commodities—everything from toothpaste to gasoline to raw materials for industry and agriculture.

The economy, already ravaged by war and systematically pillaged by Somoza, will suffer the most catastrophic collapse experienced by any Latin American economy in this century. Amost certainly, in the wake of an economic collapse, the extreme radical minority within the Sandinista army will come to the fore. Heretofore constructive village committees might become a vehicle for political mischief. Instead of a new model of pluralistic and democratic governance in Central America, Nicaragua will experience a new Castroism. Instead of the Mensheviks, the Bolsheviks.

A SMALL MIRACLE

That there is still the opportunity for U.S. support of a moderate result in Nicaragua is, in itself, a small miracle. A history of aiding the Somoza plutocracy for 41 of its 43 years, with the military hardware we had previously supplied being used to kill 20,000 to 40,000 Nicaraguans in the past year, hardly sets the stage for a U.S. role in shaping the post-Somoza outcome.

Yet, surprisingly, as we can attest from our recent travels, there is great friendliness to Americans in the country, and a widespread willingness to structure a new, amicable relationship based upon their genuine nonalignment.

But the economic situation is desperate. Unemployment is running 30% to 40%, and will spread total paralysis of the economy unless closed businesses can obtain the resources needed to make repairs and replenish inventories. Only 30% of the acreage of the chief foreign-exchange earner, cotton, could be planted because of the widespread fighting, and much of that may be lost unless sufficient pesticide can be imported during the next two months.

Before they left, the Somozas followed a virtual "scorched earth" policy. Besides sacking opponents' businesses, they borrowed heavily from outside using the convenient apparatus of a government that was synonymous with the family financial empire, looted the treasury and left behind a staggering short-term foreign debt. They depleted the cattle herds on their vast estates—probably one-third of the agricultural land in the country, they are now being redistributed to the *campesinos*—selling off so many head that Nicaragua's entire beef export quota to the U.S. was essentially filled by May.

During the waning hours of his rule, Somoza's cohorts stripped the warehouses in Corinto, the major port, fleeing with their loot to Honduras in scores of small boats, in a modern-day parody of Dunkirk. What the Somozas leave behind is a bankrupted society, its infant-mortality rate higher than that of India.

But one great "plus" of the situation is that Nicaragua is small—only 2.5 million people, living in a country the size of Oregon—and that the amount of aid required is correspondingly modest. Many have already responded. Holland, which has no geopolitical interests at stake, has just made an initial contribution of $11.7 million; Panama, which does, has mobilized a $20 million loan through its banking system and business community—the proportionate U.S. contribution, considering our vastly larger GNP, would be $16 billion, but this is many times more than what is needed.

What is needed, according to the best outside estimates, is some $1.3 billion over the next three years, divided about evenly between new aid and the rescheduling of old debt. The leadership must lie with us, and involves a sequence of four steps over the next year:

Step 1: Provide $100 million to $150 million, most of it in the next 90 days, in U.S. commodities to restore the basic functioning of the Nicaraguan economy and make crucial repairs. This, beyond the $15 million which we have already committed in emergency and reprogrammed aid, would be the U.S. share of an overall international package of $250 million to $350 million needed for this purpose. It cannot be emphasized too strongly that time is crucial here, and that these resources must begin to flow by late October if economic, and political, catastrophe is to be averted.

Step. 2: Provide, via our commercial banking system, $50 million to $100 million in medium-term loans to the Nicaraguan private sector, also within the next 90 days, to restore basic business activity. This should be facilitated with convertability and political-risk insurance written by the Overseas Private Investment Corporation, a government agency that regularly offers such guarantees.

Step. 3: Renegotiate the heavy short-term debt, as part of a process of international consultations involving both public-sector and private-sector indebtedness, rescheduling payment over the next several years. Most of this is owed to commercial banks, with about 40% of the $300 million in private-sector debt owed to U.S. banks. Close to $100 million of the amount due to U.S. banks is due in 1979. Short-term public-sector debt to the banks is as large or larger.

Step 4: Put together an international aid program that—in the hands of a government which is clearly committed to basic human needs—will correct the ravages of two generations of economic fiefdom. The U.S. share, if around 40% to 50% of the total, would come to roughly $75 million to $100 million in each of the next three years, and might continue at or near that level until the mid-1980s. Between $25 million and $35 million annually of this development assistance would fulfill AID's strong new commitment to support of land-reform programs, finally recognized as the key to agricultural development in settings such as Nicaragua. Providing support for credit, land-improvement and ancillary facilities under the flexible land redistribution which is projected

would not only permit the new owners to sharply raise productivity—as did our support in postwar Japan and Taiwan—but would give the Nicaraguan peasantry a political and economic stake in the functioning of a vigorous private sector.

TOTAL U.S. COST

The total cost to the U.S. for these four steps would be less than the $750 million which we currently spend in one year for development-aid and commodity imports for Egypt. Paradoxically, if we do not act, adequately and in time, there will be a Vietnam-style flow of hundreds of thousands of refugees that will almost certainly end up costing us much more than a direct aid program would—this apart from the vast indirect costs of such a failure.

But, with an effective U.S. response, there is, in the words of one foreign businessman who has long lived in Nicaragua, "not just a long shot, but an excellent chance, that a moderate, democratic solution will last." Such U.S. flexibility in adapting to and supporting this moderate alternative would, moreover, do much to pave the way for similar outcomes in such presently chaotic Central American societies as El Salvador and Guatemala, and beyond.

It is probably the best investment opportunity this country has been given since the Truman Doctrine and the Marshall Plan.●

ORDER FOR RECESS UNTIL 9:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes tomorrow, it be at 9:15 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER REDUCING LEADERS' TIME TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders be reduced to 5 minutes each on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF VARIOUS SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent after the two leaders are recognized or their designees on tomorrow Messrs. WEICKER, TOWER, COHEN, CRANSTON, and EAGLETON be recognized, each for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RESUMPTION OF CONSIDERATION OF S. 1308 ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the orders for the recognition of Senators on tomorrow or no later than 10:45 a.m., whichever is the earlier, the Senate resume consideration of the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9:15 a.m. tomorrow.

The motion was agreed to; and at 7:34 p.m., the Senate recessed until Thursday, October 4, 1979, at 9:15 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings, when scheduled, and any cancellations, or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, October 4, 1979, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 5

9:00 a.m.

Agriculture, Nutrition, and Forestry

Agricultural Credit and Rural Electrification Subcommittee

To continue hearings on S. 1465, proposed Farm Credit Act Amendments.

322 Russell Building

Commerce, Science, and Transportation

Consumer Subcommittee

To continue oversight hearings to examine the enforcement and administrative authortiy of the Federal Trade Commission.

235 Russell Building

Judiciary

Antitrust, Monopoly and Business Rights Subcommittee

To resume hearings on S. 1413, to extend through January 19, 1986, existing antitrust exemption for oil companies that participate in the international energy agreements.

6226 Dirksen Building

9:30 a.m.

Foreign Relations

To receive testimony on the proposed Agreement Between the United States and Australia Concerning Peaceful Uses of Nuclear Energy (PM-90).

4221 Dirksen Building

10:00 a.m.

Energy and Natural Resources

Business meeting on pending calendar business.

3110 Dirksen Building

Finance

Business meeting, to continue mark up of H.R. 3919, to impose a windfall profit tax on domestic crude oil.

2221 Dirksen Building

*Judiciary

To resume hearings on S. 1722 and 1723, bills to reform the Federal criminal laws and streamline the administration of criminal justice.

2228 Dirksen Building

Labor and Human Resources

Education, Arts and Humanities Subcommittee

To continue hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.

4232 Dirksen Building

Select on Small Business

To hold oversight hearings to review the minority assistance programs of the Small Business Administration.

3302 Dirksen Building

Joint Economic

To hold hearings on the employment-unemployment situation for September.

1318 Dirksen Building

OCTOBER 9

9:00 a.m.

Agriculture, Nutrition, and Forestry

Agricultural Credit and Rural Electrification Subcommittee

To resume hearings on S. 1465, proposed Farm Credit Act Amendments.

322 Russell Building

10:00 a.m.

Energy and Natural Resources

Business meeting on pending calendar business.

3110 Dirksen Building

Finance

To hold hearings on H.R. 3464 and 3236, bills to remove certain work disincentives for the disabled recipients of supplemental security income benefits.

2221 Dirksen Building

Joint Economic

To hold hearings to examine the minority job prospects in the next five to ten years, focusing on population shifts, labor force changes and employment trends for minorities.

340 Cannon Building

2:00 p.m.

Judiciary

Antitrust, Monopoly and Business Rights Subcommittee

To receive a report from officials of the General Accounting Office on the state insurance regulation.

5110 Dirksen Building

OCTOBER 10

9:00 a.m.

Commerce, Science, and Transportation

To hold hearings on the nomination of Patricia P. Bailey, of the District of Columbia, to be Federal Trade Commissioner.

235 Russell Building

Governmental Affairs

Governmental Efficiency and the District of Columbia Subcommittee

To hold hearings to examine the current water supply network of the Washington Metropolitan region.

357 Russell Building

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

9:30 a.m.
Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of the Education for All Handicapped Children Act of 1975 (P.L. 94-142).
4232 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings to examine the current Chrysler financial situation, focusing on the long term effects of proposed federal aid programs on our free enterprise system.
5302 Dirksen Building

*Energy and Natural Resources
To hold hearings on H.R. 3756, authorizing funds for fiscal years succeeding fiscal year 1980, to provide a medical care and environmental research program for the Marshall Islands, resulting from U.S. nuclear weapons tests, and to administer and enforce certain taxes and customs duties in the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa; and H.R. 3758, to stipulate that U.S. income tax laws will not become effective in the Northern Mariana Islands as a local territorial income tax until January 1, 1982.
3110 Dirksen Building

Finance
To continue hearings on H.R. 3464 and 3236, bills to remove certain work disincentives for the disabled recipients of supplemental security income benefits.
2221 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume oversight hearings to examine alleged fraud and mismanagement practices in the General Services Administration.
457 Russell Building

Governmental Affairs
Oversight of Government Management Subcommittee
To hold oversight hearings on the implementation of the President's Executive order dated March 23, 1978, directing each executive agency to adopt procedures to improve existing and future regulations.
3302 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To resume hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.
1318 Dirksen Building

Select on Intelligence
Charters and Guidelines Subcommittee
To hold a closed business meeting.
Room S-407, Capitol

10:30 a.m.
To resume hearings on S. 1612, to create a statutory charter which defines the policy and intent of the investigative authority and responsibilities in matters under the jurisdiction of the FBI.
2228 Dirksen Building

OCTOBER 11

9:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To hold hearings on S. 531, to allow State-inspected meatpacking plants which meet Federal requirements, to sell their product to federally-inspected plants for further processing, and efficiency throughout the meat industry, and help put an end to the destruction of the smaller plants.
322 Russell Building

Judiciary
To continue hearings on S. 1612, to create a statutory charter which defines the policy and intent of the investigative authority and responsibilities in matters under the jurisdiction of the FBI.
2228 Dirksen Building

9:30 a.m.
Commerce, Science, and Transportation
To resume hearings on S. 1798, to reduce regulations governing the household moving industry.
235 Russell Building

Judiciary
Constitution Subcommittee
To resume hearings on proposals advocating a balanced Federal budget or restricting in some way the growth of Federal outlays which include S.J. Res. 2, 4, 5, 6, 7, 9, 10, 11, 13, 16, 18, 36, 38, 45, 46, and 56.
1202 Dirksen Building

10:00 a.m.
Banking, Housing, and Urban Affairs
Economic Stabilization Subcommittee
To resume oversight hearings on the Administration's anti-inflation program, and to review inflationary trends.
5302 Dirksen Building

Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Finance
To resume markup of H.R. 3919, to impose a windfall profit tax on domestic crude oil.
2221 Dirksen Building

Labor and Human Resources
Education, Arts and Humanities Subcommittee
To continue hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.
4232 Dirksen Building

2:00 p.m.
Environment and Public Works
Water Resources Subcommittee
To resume hearings on S. 1241, authorizing funds through fiscal year 1981 for water resources projects, and to restructure or Federal water resource policy.
5110 Dirksen Building

OCTOBER 12

9:00 a.m.
Judiciary
To hold hearings on S. 680, to broaden the rights of citizens to sue in Federal courts for unlawful governmental action.
2228 Dirksen Building

9:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Production, Marketing, and Stabilization of Prices Subcommittee
To hold hearings on S. 6 and 80, bills to extend through September 30, 1981, the current price support levels for dairy products.
324 Russell Building

10:00 a.m.
Banking, Housing, and Urban Affairs
To resume oversight hearings to examine the current Chrysler financial situation, focusing on the long-term effects of proposed federal aid programs on our free enterprise system.
5302 Dirksen Building

Energy and Natural Resources
Energy Resources and Materials Production Subcommittee
To hold hearings on S. 1637, to modify the existing oil and gas leasing system on public lands.
3110 Dirksen Building

Finance
To continue markup of H.R. 3919, to impose a windfall profit tax on domestic crude oil.
2221 Dirksen Building

Governmental Affairs
Civil Service and General Services Subcommittee
To hold hearings on the use of consultant services by the Federal Government.
1114 Dirksen Building

Judiciary
Constitution Subcommittee
Business meeting, to consider S. 506, to provide the Department of Housing and Urban Development with new enforcement powers to insure compliance with statutes guaranteeing equal access to housing in the United States.
154 Russell Building

11:00 a.m.
Conferees
On S. 640, authorizing funds for fiscal year 1980 for the Maritime Administration, Department of Commerce.
H-128, Capitol

OCTOBER 15

9:30 a.m.
*Energy and Natural Resources
Energy Regulation Subcommittee
To resume hearings on S. 1684, to provide for the development, improvement, and operation of domestic refinery capabilities.
6226 Dirksen Building

10:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research and General Legislation Subcommittee
To hold joint hearings with the Committee on Commerce, Science, and Transportation on E. 1408 and 1650, bills to provide for the development of aquaculture in the United States.
235 Russell Building

Commerce, Science, and Transportation
To hold joint hearings with the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition, and Forestry, on S. 1408 and 1650, bills to provide for the development of aquaculture in the United States.
235 Russell Building

Environment and Public Works
To hold hearings to determine the best means for securing architectural service and designs for buildings constructed, maintained or renovated by the General Services Administration.
4200 Dirksen Building

2:00 p.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

OCTOBER 16

10:00 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Foreign Relations
To hold hearings on the following international treaties proposing human rights: the International Convention on the Elimination of All Forms of Racial Discrimination Treaty (Exec. C, 95th Cong., 2d sess.); the International Covenant on Economic, Social and Cultural Rights Treaty (Exec. D, 95th Cong., 2d sess.); the International Covenant on Civil and Political Rights Treaty (Exec. E, 95th Cong. 2d sess.); and the American Convention on Human Rights Treaty (Exec. F, 95th Cong., 2d sess.).
4221 Dirksen Building

OCTOBER 17

9:30 a.m.
Labor and Human Resources
Child and Human Development Subcommittee
To hold oversight hearings on the implementation of older American volunteer programs by ACTION agencies.
4232 Dirksen Building

10:00 a.m.
Commerce, Science, and Transportation
To resume oversight hearings on the Federal Trade Commission's study of the life insurance industry's cost disclosure policy.
235 Russell Building

Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

Foreign Relations
To continue hearings on the following international treaties proposing human rights: the International Convention on the Elimination of All Forms of Racial Discrimination Treaty (Exec. C, 95th Cong,. 2nd sess.); the International Covenant on Economic, Social and Cultural Rights Treaty (Exec. D, 95th Cong., 2nd sess.); the International Covenant on Civil and Political Rights Treaty (Exec. E, 95th Cong., 2nd sess.); and the American Convention on Human Rights Treaty (Exec. F, 95th Cong., 2nd sess.).
4221 Dirksen Building

OCTOBER 18

10:00 a.m.
Energy and Natural Resources
To hold hearings on S. 1699, and Amendment No. 395 to S. 1308, measures to expand the existing energy impact assistance to State and local governments contained in the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95-620) to reflect recent legislative initiatives to foster greater domestic energy production.
3110 Dirksen Building

Foreign Relations
To continue hearings on the following international treaties proposing human rights: the International Convention on the Elimination of All Forms of Racial Discrimination Treaty (Exec. C, 95th Cong., 2nd sess.); the International Covenant on Economic, Social and Cultural Rights Treaty (Exec. D, 95th Cong., 2nd sess.); the International Covenant on Civil and Political Rights Treaty (Exec. E, 95th Cong., 2nd sess.); and the American Convention on Human Rights Treaty (Exec. F, 95th Cong., 2nd sess.).
4221 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To hold oversight hearings on alleged fraud and mismanagement practices in the Community Services Administration.
3302 Dirksen Building

*Labor and Human Resources
Health and Scientific Research Subcommittee
Business meeting, to consider S. 1177, to establish a partnership between the Federal Government and the States in the planning and provisions of mental health services.
4232 Dirksen Building

Joint Economic
To resume hearings to examine the minority job prospects in the next five to ten years, focusing on population shifts, labor force changes and employment trends for minorities.
340 Cannon Building

2:00 p.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

OCTOBER 19

9:30 a.m.
Energy and Natural Resources
To continue hearings on S. 1699 and Amendment No. 395 to S. 1308, measures to expand the existing energy impact assistance to State and local governments contained in the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95-620) to reflect recent legislative initiatives to foster greater domestic energy production.
3110 Dirksen Building

10:00 a.m.
Labor and Human Resources
Business meeting, to mark up S. 1724, to provide grants to States to assist low and moderate income individuals to meet the rising home energy costs.
4232 Dirksen Building

2:00 p.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

OCTOBER 23

9:30 a.m.
Joint Economic
Economic Growth and Stabilization Subcommittee
To resume hearings to promote equitable economic deregulation of the railroad industry.
5110 Dirksen Building

10:00 a.m.
Labor and Human Resources
To hold oversight hearings to explore youth issues for the coming decade, focusing on the Federal role in public sector employment, training and educational programs.
4232 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To resume hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.
457 Russell Building

OCTOBER 24

8:00 a.m.
Agriculture, Nutrition, and Forestry
Rural Development Subcommittee
To hold oversight hearings to review the implementation of rural transportation programs and how they affect the quality of life in rural and small urban areas in America.
324 Russell Building

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold hearings on S. 829 and 1644, bills to provide for Federal management of a 20-year coordination program in weather modification within the Department of Commerce.
235 Russell Building

10:00 a.m.
Judiciary
To resume hearings on S. 1612, to create a statutory charter which defines the policy and intent of the investigative authority and responsibilities in matters under the jurisdiction of the FBI.
2228 Dirksen Building

Labor and Human Resources
To continue oversight hearings to explore youth issues for the coming decade, focusing on the Federal role in public sector employment, training, and educational programs.
4232 Dirksen Building

OCTOBER 25

9:30 a.m.
Veterans' Affairs
To hold joint oversight hearings with the House Committee on Veterans' Affairs on admission policies to Veterans' Administration's medical care facilities.
345 Cannon Building

10:00 a.m.
Judiciary
To continue hearings on S. 1612, to create a statutory charter which defines the policy and intent of the investigative authority and responsibilities in matters under the jurisdiction of the FBI.
2228 Dirksen Building

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To resume hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.
4232 Dirksen Building

OCTOBER 26

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To resume hearings in S. 829 and 1644, bills to provide for Federal management of a 20-year coordinated program in weather modification within the Department of Commerce.
235 Russell Building

10:00 a.m.
Joint Economic
To resume hearings on the Consumer Price Index figures and inflationary trends.
5110 Dirksen Building

OCTOBER 29

9:30 a.m.
*Veterans' Affairs
To hold hearings on S. 1523 and H.R. 4015, bills to provide the capability of maintaining health care and medical services for the elderly under the Veterans' Administration.
5110 Dirksen Building

OCTOBER 31

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings to review proposed techniques in the field of industrial development.
235 Russell Building

Select on Small Business
To hold hearings to review the impact of private and commercial credit reporting services on small business, to focus on the accuracy, reliability, and assessability of information released by such services.
424 Russell Building

NOVEMBER 1

9:30 a.m.
Select on Small Business
To continue hearings to review the impact of private and commercial credit reporting services on small business, to focus on the accuracy, reliability, and assessability of information released by such services.
424 Russell Building

NOVEMBER 2

9:30 a.m.
Judiciary
To resume hearings on S. 1612, to create a statutory charter which defines the policy and intent of the investigative authority and responsibilities in matters under the jursdiction of the FBI.
2228 Dirksen Building

NOVEMBER 7

9:30 a.m.
Commerce, Science, and Transportation
To resume oversight hearings to review proposed techniques in the field of industrial development.
235 Russell Building

NOVEMBER 14

9:30 a.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To resume hearings on S. 1250, to develop techniques for analyzing and stimulating technological and industrial innovation by the Federal Government.
235 Russell Building

CANCELLATIONS

OCTOBER 5

9:30 a.m.
Agriculture, Nutrition, and Forestry
Foreign Agricultural Policy Subcommittee
To hold hearings on proposed sales of American grains to the Soviet Union.
457 Russell Building

10:00 a.m.
Environment and Public Works
Subcommittees on Environmental Pollution and Resource Protection
To continue consideration of S. 1480, 1325, and 1341, bills to provide for adequate and safe treatment of hazardous substances being released into the environment.
4200 Dirksen Building

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume oversight hearings to examine alleged fraud and mismanagement practices in the General Services Administration.
3302 Dirksen Building

Judiciary
Constitution Subcommittee
Business meeting, to consider S. 506, to provide the Department of Housing and Urban Development with new enforcement powers to insure compliance with statutes guaranteeing equal access to housing in the United States.
Room to be announced

OCTOBER 10

10:00 a.m.
Energy and Natural Resources
Business meeting on pending calendar business.
3110 Dirksen Building

OCTOBER 12

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To continue hearings on S. 1839, 1840, and 1841, bills authorizing funds through fiscal year 1984 for programs under the Higher Education Act.
4232 Dirksen Building

SENATE—*Thursday, October 4, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Dear Lord and Father of mankind, at this perilous moment in history, wilt Thou draw together in a firm spiritual alliance the forces of righteousness in every nation. Reveal once more man's true nature and his ultimate destiny in Thy kingdom. Make known to us the invincibility of goodness and the power of redemptive love. Show us the way of sacrificial service, even the way of the Cross. Rally the people who know Thee and trust Thee to a deeper fellowship with one another, to seek and to find their security in that perfect love that casteth out all fear. Keep our hearts open to the movements of Thy spirit not only when we pray but while we work.

We pray in the Redeemer's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 4, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. PROXMIRE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized for not to exceed 5 minutes.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

Mr. BAKER. Mr. President, reserving the right to object, and I will not, my reservation is for the purpose of informing the majority leader that all the items on today's Executive Calendar are cleared on this side, and we have no objection to proceeding to their confirmation.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will go into executive session to consider the nominations on the Executive Calendar.

Mr. SARBANES. Mr. President, I wish to make a statement with respect to two nominations that are on the Executive Calendar to which the majority leader has referred. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the Senator.

NOMINATION OF JUDGE SHIRLEY B. JONES AND JUDGE JOSEPH C. HOWARD

Mr. SARBANES. Mr. President, I rise in strong support of the Judiciary Committee's recommendations that the Senate confirm the appointments of Judge Shirley B. Jones and Judge Joseph C. Howard for the U.S. District Court for the District of Maryland.

It is my firm conviction that Judge Jones and Judge Howard will bring strength and quality to the Federal District Court for the District of Maryland. They are seasoned trial judges of outstanding ability, character, and integrity. I believe their selection carries out the commitment expressed by the President and the Congress, a commitment which I strongly share, to seek out men and women for the Federal courts whose selection will be based on merit.

Judge Jones was born and brought up in Cambridge on Maryland's Eastern Shore. Following her graduation from Cambridge High School in 1942, she went to Baltimore to attend the University of Baltimore. She did her prelaw and legal training in 4 years and received her law degree from the University of Baltimore in 1946 with the highest scholastic average in her class. She was admitted to the Maryland Bar in June 1947 at the age of 22.

From the time of her admission to the bar until going on the bench in 1961, Judge Jones held a number of public legal positions. From 1947 to 1952 she served as an attorney and appeals referee with the Maryland Department of Employment Security. She then served 6 years, 1952–58, as an assistant city solicitor for Baltimore City and 1 year, 1958–59, as an assistant attorney general of the State of Maryland, the first woman to hold this position. From 1959–61 Judge Jones served on the Orphans' Court of Baltimore City. Throughout this period she engaged in the general practice of law as a sole